

Exhibit 43

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

- - -

FREDERICK F. FAGAL, JR. : CIVIL ACTION
:
Plaintiff, : NO. 3:14-cv-02404-ARC
:
vs. : (JUDGE CAPUTO)
:
MARYWOOD UNIVERSITY, :
:
Defendant. :
:
- - -

September 6, 2016

- - -

Oral deposition of Alan M. Levine, taken pursuant to notice, was held at the Radisson Lackawanna Station Hotel, Suite 206, 700 Lackawanna Avenue, Scranton, Pennsylvania, commencing at 9:30 a.m., on the above date, before Judy A. Black, a Registered Professional Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania.

- - -

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APPENDANCES:

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ALSO PRESENT:

FREDERICK F. FAGAL, JR.

Levine-6 E-mail chain dated Tuesday, January 17, 2012, Bates Nos. DEF002743-2746 27
 Levine-7 E-mail chain dated Tuesday, January 17, 2012, Bates Nos. DEF002734-2735 28
 Levine-8 E-mail chain dated Sunday, January 22, 2012, Bates Nos. DEF002759-2760 30
 Levine-9 Letter dated January 24, 2012, with attachments, Bates Nos. DEF000166-187 44
 Levine-10 Document headed "Talking Points for Board," Bates Nos. DEF000145-146 46
 Levine-11 Document headed "Talking Points for Meeting," Bates No. DEF000147 48
 Levine-12 E-mail dated Monday, January 30, 2012, Bates No. DEF002756 48
 Levine-13 E-mail dated Monday, April 2, 2012, Bates No. DEF002380 49

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Testimony of: Alan M. Levine

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By Mr. Cohen 6
 By Ms. Peet 53

EXHIBITS

NUMBER	DESCRIPTION	PAGE
Levine-1	5-page document headed "Marywood University Progressive Discipline"	10
Levine-2	E-mail dated Wednesday, November 9, 2011, Bates No. DEF002392	11
Levine-3	E-mail chain dated Monday, November 28, 2011, Bates Nos. DEF002703-2705	14
Levine-4	E-mail chain dated Wednesday, November 30, 2011, Bates Nos. DEF002713-2714	20
Levine-5	E-mail chain dated Thursday, December 1, 2011, Bates No. DEF002416	24

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DEPOSITION SUPPORT INDEX

Direction to Witness Not to Answer
 Page Line Page Line Page Line
 None

Request for Production of Documents
 Page Line Page Line Page Line
 None

Stipulations

Page Line Page Line Page Line
 6 1

Question Marked

Page Line Page Line Page Line
 None

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1 ---

2 **STIPULATIONS**

3 ---

4 **IT IS STIPULATED** by and between counsel
 5 that the Deposition of Alan M. Levine, is being
 6 taken pursuant to agreement and that all
 7 objections, except as to form, are reserved
 8 until the time of trial. Alan M. Levine does
 9 not waive the reading, signing, and filing of
 10 the Deposition.

11 ---

12 A L A N M. L E V I N E, having
 13 been duly sworn, was examined and testified as
 14 follows:

15 ---

16 **DIRECT EXAMINATION BY MR. COHEN:**

17 Q. Good morning, Dr. Levine.
 18 A. Good morning.
 19 Q. My name is Jonathan Cohen. I represent
 20 the plaintiff in this litigation, Frederick F. Fagal,
 21 Jr. Do you understand that you're under oath today,
 22 the same as if you were in a courtroom?
 23 A. I do.
 24 Q. And have you ever had your deposition

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1 taken?
 2 A. Nope.
 3 Q. Okay. So the way this works is I just
 4 ask you questions, and unless your attorney instructs
 5 you not to answer, you're supposed to answer them.
 6 If you don't understand the question, please just say
 7 so and I'll rephrase it. If you need to take a
 8 break, that's fine, too.

9 As I'm asking a question, you might
 10 think that you know what I'm about to ask and you
 11 might start answering it, but that's hard for the
 12 court reporter to take everything down, so if you can
 13 just wait until I finish the question, it's easier
 14 for everybody.

15 Is there anything that would prevent you
 16 from thinking clearly or testifying truthfully today?

17 A. Nope.
 18 Q. What is your full name including any
 19 middle name?

20 A. Alan Michael Levine.
 21 Q. And could you tell me a little bit about
 22 your educational background, Dr. Levine?

23 A. I could.
 24 Q. Could you?

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1 A. I could.
 2 Q. Could you explain -- did you go to
 3 college, did you go to grad school?
 4 A. Yes.
 5 Q. Tell me where you went.
 6 A. I went to college at Hofstra University.
 7 Q. Okay. Did you attend graduate school?
 8 A. I did.
 9 Q. And where did you go to graduate school?
 10 A. New York University.
 11 Q. And what were your degrees in?
 12 A. Where?
 13 Q. Both places.
 14 A. Psychology undergrad, nutrition and
 15 dietetics master's, nutrition and dietetics Ph.D.
 16 Q. Okay. When did you first begin working
 17 for Marywood University?
 18 A. 1978.
 19 Q. And what did you do before then
 20 professionally?
 21 A. Lots of things.
 22 Q. Okay. And, today, are you still
 23 employed by Marywood University?
 24 A. Yes.

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1 Q. And what's your position there?
 2 A. Professor.
 3 Q. And it's true that at one point you were
 4 vice president, correct, of academic affairs?
 5 A. Correct.
 6 Q. When did you first meet my client,
 7 Professor Fagal?
 8 A. I don't remember.
 9 Q. Would it be fair to say that Professor
 10 Fagal has had a number of run-ins with Marywood's
 11 administration?
 12 MS. PEET: Objection to the form. You
 13 can answer.
 14 THE WITNESS: Yes, I can answer?
 15 MS. PEET: You can answer.
 16 A. Would you repeat the question?
 17 Q. Would it be fair to say that Professor
 18 Fagal has had a number of run-ins with Marywood's
 19 administration?
 20 MS. PEET: Objection. You can answer.
 21 A. I don't know what run-ins means.
 22 Q. Confrontations?
 23 A. You'd have to define that term for me.
 24 Q. You don't understand what a

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<p>1 confrontation is?</p> <p>2 A. There's all levels of confrontation.</p> <p>3 Q. Okay. We'll move on. We're going to</p> <p>4 mark this as exhibit Levine-1, please.</p> <p>5 (Levine-1, 5-page document headed</p> <p>6 "Marywood University Progressive Discipline Policy</p> <p>7 Statement," is received and marked for</p> <p>8 identification.)</p> <p>9 Q. Now, Dr. Levine, are you familiar with</p> <p>10 that document? And you can briefly review it,</p> <p>11 please.</p> <p>12 A. Yes.</p> <p>13 Q. Okay. And what is it?</p> <p>14 A. Marywood University progressive</p> <p>15 discipline policy statement.</p> <p>16 Q. And could you turn to the last page? Do</p> <p>17 you see the section where it says "History"?</p> <p>18 A. Yes.</p> <p>19 Q. And this section covers, you know, when</p> <p>20 various versions of this policy became effective,</p> <p>21 correct?</p> <p>22 MS. PEET: Objection, lack of</p> <p>23 foundation. You can answer.</p> <p>24 A. I believe that to be true.</p>	<p>1 A. I'm finished.</p> <p>2 Q. Do you recognize this document,</p> <p>3 Dr. Levine?</p> <p>4 A. Yes.</p> <p>5 Q. And what is this?</p> <p>6 A. An e-mail document.</p> <p>7 Q. That's correct. Is it an e-mail from</p> <p>8 you to -- from Dr. Foley to you dated November 8,</p> <p>9 2011, at 8:25 p.m.?</p> <p>10 A. No.</p> <p>11 MS. PEET: November 9th.</p> <p>12 Q. November 9, 2011?</p> <p>13 A. Yes.</p> <p>14 Q. Who is Dr. Michael Alan Foley?</p> <p>15 A. Who is he?</p> <p>16 Q. Yes.</p> <p>17 A. He's a man. I don't understand your</p> <p>18 question.</p> <p>19 Q. Did he have a position at Marywood</p> <p>20 University?</p> <p>21 A. Yes.</p> <p>22 Q. What was his position?</p> <p>23 A. When?</p> <p>24 Q. At the time this e-mail was written.</p>
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<p>1 Q. And do you know if this is a policy that</p> <p>2 was in effect when Professor Fagal departed Marywood</p> <p>3 University?</p> <p>4 A. I don't know.</p> <p>5 Q. Did you have any role in helping to</p> <p>6 formulate the policy that we're looking at?</p> <p>7 I'm sorry, did you say something?</p> <p>8 A. I'm looking. I didn't say anything yet.</p> <p>9 I don't believe the policy -- no, I</p> <p>10 don't believe so.</p> <p>11 Q. Did you serve on the policy committee at</p> <p>12 Marywood?</p> <p>13 A. Yes.</p> <p>14 Q. Okay. Have you ever read this policy in</p> <p>15 full?</p> <p>16 A. Yes.</p> <p>17 Q. Let's move on.</p> <p>18 I'm going to have this marked as Levine</p> <p>19 Exhibit 2?</p> <p>20 (Levine-2, E-mail dated Wednesday,</p> <p>21 November 9, 2011, Bates No. DEF002392, is received</p> <p>22 and marked for identification.)</p> <p>23 Q. And could you, Dr. Levine, read this to</p> <p>24 yourself, let me know when you're finished?</p>	<p>1 A. Dean, College of Liberal Arts and</p> <p>2 sciences.</p> <p>3 Q. Did you ever respond to this e-mail? I</p> <p>4 know this was a long time ago.</p> <p>5 A. I don't remember.</p> <p>6 Q. Okay. At the time this e-mail was</p> <p>7 written, was it, in fact, becoming more and more</p> <p>8 difficult to staff Professor Fagal's courses?</p> <p>9 A. The e-mail says it was.</p> <p>10 Q. I'm aware of that. I'm asking you if,</p> <p>11 in fact, that was true.</p> <p>12 A. As I read the e-mail, it appears to be</p> <p>13 true.</p> <p>14 Q. Okay. Why was it becoming more</p> <p>15 difficult to staff Professor Fagal's courses?</p> <p>16 MS. PEET: Objection, lack of</p> <p>17 foundation. You can answer, if you know.</p> <p>18 A. I'm not sure.</p> <p>19 Q. Was this e-mail the first time that this</p> <p>20 issue came to your attention, difficulty in staffing</p> <p>21 Professor Fagal's courses?</p> <p>22 A. I don't remember.</p> <p>23 Q. Do you remember if you or Dr. Foley came</p> <p>24 to a solution to the problem of the difficulty in</p>
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1 staffing Professor Fagal's courses?
 2 MS. PEET: Objection to the form. You
 3 can answer.
 4 A. I don't believe so.
 5 Q. Okay. If fewer and fewer students were
 6 taking Professor Fagal's classes, would it be fair to
 7 say Professor Fagal was becoming a more expensive
 8 employee to keep around?
 9 MS. PEET: Objection to the form, lack
 10 of foundation. Calls for speculation.
 11 You can answer, if you know.
 12 A. Would you repeat the question?
 13 Q. If it was becoming harder and harder to
 14 enroll students in Professor Fagal's classes, would
 15 it be fair to say that it became more and more
 16 expensive to keep Professor Fagal around?
 17 MS. PEET: Objection.
 18 A. Same salary. There's no change in the
 19 expense.
 20 I'm going to get some water.
 21 MS. PEET: Sure.
 22 MR. COHEN: Okay. We're going to make
 23 this Levine Exhibit 3.
 24 (Levine-3, E-mail chain dated Monday,
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1 November 28, 2011, Bates Nos. DEF002703-2705, is
 2 received and marked for identification.)
 3 BY MR. COHEN:
 4 Q. And can you review this entire e-mail
 5 chain and let me know when you're finished, please?
 6 A. Finished.
 7 Q. Do you recognize this document,
 8 Dr. Levine?
 9 A. Yes.
 10 Q. Okay. It begins with an e-mail from
 11 Professor Fagal on November 23rd, 2011, correct, to
 12 Mr. Oliveri?
 13 A. Correct.
 14 Q. And then Sister Margaret Gannon forwards
 15 you that e-mail, correct, on November -- on the same
 16 day?
 17 A. Correct.
 18 Q. And at the time, what position did
 19 Sister Margaret Gannon have with Marywood?
 20 A. I believe she was chair.
 21 Q. Of Professor Fagal's department?
 22 A. Of the social science department.
 23 Q. Okay.
 24 A. I believe. I believe that.
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1 Q. And so she forwards you Professor
 2 Fagal's e-mail, and then on November 24, 2011, you
 3 respond, correct?
 4 A. Yes.
 5 Q. And you say, "Thanks for the heads-up."
 6 That's your first line, correct?
 7 A. Correct.
 8 Q. Why did you thank her for the heads-up?
 9 A. I was being polite.
 10 Q. Well, what is it about the situation
 11 that even needed your input?
 12 A. I'm not sure anything needed my input.
 13 Q. Do you have any idea why Sister Gannon
 14 forwarded this to you?
 15 MS. PEET: Objection to the form. Calls
 16 for speculation. You can answer, if you know.
 17 A. I was vice president academic affairs.
 18 It was an academic issue.
 19 Q. Anytime a professor wanted to bring a
 20 speaker to class, it became an issue for you?
 21 MS. PEET: Objection to the form. You
 22 can answer.
 23 A. No.
 24 Q. Okay. What is it about this particular
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1 class -- what is it about this particular attempt to
 2 call an outside speaker to class that it rose to your
 3 level and it became an issue?
 4 MS. PEET: Objection to the form. You
 5 can answer.
 6 A. Movement to a venue that was not normal
 7 class -- not the normal place for the class and
 8 inviting the entire community to class, that's very
 9 unusual.
 10 Q. Is it problematic?
 11 A. Problematic? Not if a venue is
 12 available and the class is run the way classes are
 13 normally run.
 14 Q. And your second sentence reads, "I'm in
 15 Michigan, so I'm less able to check out some things
 16 which I believe to be germane to the situation,"
 17 correct?
 18 A. Yes.
 19 Q. What things did you think were germane
 20 to the situation?
 21 A. Movement to a different venue, whether
 22 or not that class is being scheduled at a time the
 23 class is normally scheduled or whether students were
 24 being asked to attend the class at a time other than
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1 our regularly scheduled class.

2 Q. Why did you -- further down in your
3 e-mail, you mentioned that you'd be interested in
4 knowing whether anyone in social sciences had ever
5 opened their class to the entire campus, correct?

6 A. Yes, that's what the e-mail says, yes.

7 Q. Why did you care whether anyone in
8 social sciences had ever opened their class to the
9 entire campus?

10 A. Seemed unusual to have a change in venue
11 and invite the entire campus. That is generally not
12 done at Marywood. I don't know it's ever been done,
13 although I don't know that for sure. Seemed odd.

14 Q. The fact that it was odd to you, did
15 that make it a problem?

16 A. It makes it something, as VPAA, I should
17 investigate.

18 Q. After your e-mail, Sister Gannon replied
19 to you, correct, on November 26th?

20 A. Yes.

21 Q. And then you forwarded Sister Gannon's
22 e-mail to Sister Anne Munley, correct?

23 A. I don't know. Obviously I wrote an
24 e-mail to Sister Anne Munley, but whether I forwarded

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1 A. The real issue to me was what I told
2 you. Additionally, Marywood has a policy wherein if
3 a speaker comes representing one side of an issue,
4 the university invites at the same time a speaker
5 representing the other side.

6 Q. Is that a written policy, or was it a
7 written policy?

8 A. I don't know.

9 Q. What was the political agenda that you
10 thought that the speaker that Professor Fagal had
11 proposed to bring had?

12 A. I don't remember. I don't remember back
13 at the time.

14 Q. It's okay.

15 Do you remember if Sister Munley
16 responded to your e-mail?

17 A. I don't remember.

18 Q. Okay.

19 MR. COHEN: Let's make this exhibit
20 Levine-4, please.

21 (Levine-4, E-mail chain dated Wednesday,
22 November 30, 2011, Bates Nos. DEF002713-2714is
23 received and marked for identification.)

24 Q. And could you read this to yourself, as
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1 this, I'm not sure.

2 Q. Okay.

3 A. Did I?

4 Q. Now, to Sister Munley, you were --
5 you're mentioning that there will be posters
6 advertising the event, and -- correct?

7 A. Let's see.

8 MS. PEET: Is the question does the
9 e-mail say there will be posters advertising the
10 event?

11 MR. COHEN: Yes.

12 A. Yes.

13 Q. And the last sentence in your e-mail
14 says, "It seems to me that Fred and Tom are simply
15 trying to circumvent our guidelines concerning
16 outside speakers who have a political agenda,"
17 correct?

18 A. That's what it says, yes.

19 Q. So the real issue to you was not so much
20 that the entire campus was invited or that it was in
21 a different room, it was that you thought the speaker
22 had a political agenda, correct?

23 MS. PEET: Object to the form.

24 Mischaracterization of testimony. You can answer.
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1 well, and let me know when you're finished?

2 A. I'm finished.

3 Q. Raymond P. Heath, he was vice president
4 for student life at the time?

5 A. Yes.

6 Q. And in Dr. Heath's e-mail to you, the
7 most recent one in the exchange on November 30, 2011,
8 his first sentence is, "Without all of the details
9 now, Fred Fagal's poor behavior has continued."
10 Correct?

11 A. That's what the e-mail says.

12 Q. Do you know what Dr. Heath meant by
13 "Fred Fagal's poor behavior"?

14 MS. PEET: Objection to the form, calls
15 for speculation. You can answer if you know.

16 A. No, I don't know.

17 Q. Later on in the e-mail, Dr. Heath
18 states, "After enabling him for so long, isn't a
19 similar session overdue? If you agree, could a
20 conversation with him, the dean, you, me, and anyone
21 else you suggest be scheduled soon?" Did I read that
22 correctly?

23 A. Yes.

24 Q. Did you agree that Professor Fagal was
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1 being enabled?
 2 A. I don't remember if I agreed with him.
 3 Q. Did you agree with Dr. Heath that a
 4 conversation with Professor Fagal was in order
 5 regarding his behavior?
 6 A. I don't remember for sure.
 7 Q. Do you know whether this was ever done,
 8 whether someone had a talk with Professor Fagal about
 9 his behavior?
 10 A. Define "someone."
 11 Q. Any administrators at Marywood
 12 University, including you?
 13 MS. PEET: I'm sorry. Could you repeat
 14 the question?
 15 BY MR. COHEN:
 16 Q. At some point, did you, did any other
 17 administrators have a conversation with Professor
 18 Fagal regarding the poor behavior referenced in this
 19 e-mail?
 20 MS. PEET: Objection to the form. You
 21 can answer.
 22 A. Yeah, I can't speak for what other
 23 administrators did. I'm not privy to that.
 24 Q. How about you?

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1 (Levine-5, E-mail chain dated Thursday,
 2 December 1, 2011, Bates No. DEF002416, is received
 3 and marked for identification.)
 4 Q. And could you read this exchange to
 5 yourself and let me know when you're finished?
 6 A. Finished.
 7 Q. The latest e-mail in the chain is again
 8 from Dr. Heath to you on December 1st, 2011, correct?
 9 A. Correct.
 10 Q. He references Peter's staff here. Do
 11 you know who he's referring to, which Peter?
 12 A. Yes.
 13 Q. Who is that?
 14 A. Who is Peter?
 15 Q. Yes.
 16 A. Peter Kilcullen.
 17 Q. In this e-mail, Dr. Heath is telling you
 18 that Professor Fagal is attempting to intimidate, if
 19 not bully, Carl Oliveri and Peter's staff. Would you
 20 agree with that?
 21 A. I agree that the e-mail says, "I do
 22 think a conversation with Fred Fagal to discuss his
 23 attempts to intimidate, if not bully, Carl Oliveri
 24 and Peter's staff is overdue." That's what it says.

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1 A. I don't remember if I had a conversation
 2 concerning this e-mail, but I have had conversations
 3 with Fagal.
 4 Q. About behavior?
 5 A. I don't remember.
 6 Q. Okay. Do you remember if you ever
 7 responded to Dr. Heath's e-mail here?
 8 A. I believe I did.
 9 Q. Do you remember what you said?
 10 A. No.
 11 Q. Okay.
 12 MR. COHEN: Stephanie, if indeed
 13 Dr. Levine replied to this e-mail, I don't think we
 14 saw it in production. Maybe it doesn't exist.
 15 MS. PEET: To the extent it exists, it's
 16 been produced. I can confirm that for sure. And you
 17 can trust me, it's been.
 18 MR. COHEN: I understand it's been a
 19 large document production.
 20 MS. PEET: Yes, we're not holding
 21 anything back. So to the extent there was a
 22 response, it's been produced.
 23 MR. COHEN: Let's have this marked as
 24 exhibit Levine-5.

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1 Q. I understand that. Do you agree that,
 2 in fact, Professor Fagal was attempting to intimidate
 3 or bully Carl Oliveri?
 4 MS. PEET: Objection to the form.
 5 A. I don't know.
 6 Q. Did you investigate this?
 7 A. No.
 8 Q. Did you agree with Raymond Heath that a
 9 conversation with Professor Fagal was necessary to
 10 address the alleged bullying and intimidation?
 11 MS. PEET: Objection to the form. You
 12 could answer.
 13 A. Probably. Probably it was necessary.
 14 Q. Okay. Did you ever have a conversation
 15 with Professor Fagal about this?
 16 A. No.
 17 Q. Why was it necessary?
 18 A. It was a student-life issue that Ray
 19 Heath felt that a conversation was necessary. As a
 20 fellow vice president, I didn't disagree.
 21 Q. I'm sorry, what was the last thing you
 22 said?
 23 A. I said, as a fellow vice president. I
 24 was a fellow vice president. I didn't disagree that

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1 a conversation wasn't necessary.

2 Q. In the same e-mail, Dr. Heath references
3 Professor Fagal's other agenda. Do you see that?

4 A. Yes.

5 Q. Do you know what agenda he was referring
6 to?

7 A. No.

8 Q. Did you agree that Professor Fagal's
9 behavior was affecting individual's outside of his
10 department?

11 A. Yes.

12 Q. How was he affecting them?

13 A. He was causing difficulty for some
14 students.

15 Q. What type of difficulty?

16 A. Emotional difficulty.

17 Q. How was he causing emotional difficulty?

18 A. By putting a cartoon demeaning Muslims
19 on his door, he was causing difficulty for Muslim
20 students who didn't agree with him. Emotional
21 difficulty, or emotional pain.

22 Q. Is that the only way that you know of
23 that he was affecting these students?

24 A. As far as I remember now.

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1 Q. And do you remember responding to this
2 e-mail?

3 A. I don't remember, but I'm sure you have
4 a response if there is one.

5 MR. COHEN: Let's have this marked as
6 Levine Exhibit 6, please.

7 (Levine-6, E-mail chain dated Tuesday,
8 January 17, 2012, Bates Nos. DEF002743-2746, is
9 received and marked for identification.)

10 Q. And could you read this to yourself and
11 let me know when you're finished, please?

12 A. Finished.

13 Q. Okay. These e-mails reference Mary
14 Theresa. That's Marywood's inside attorney, correct?

15 A. Correct.

16 Q. Now, I don't want to know what you asked
17 her, but --

18 MS. PEET: That would also go to what
19 she said to you, to the extent she said anything.

20 Q. Yes, I'm not trying to ask you anything
21 that's privileged. But what I am interested in is
22 you're saying to Pat Dunleavy, you're trying to find
23 out what your -- what our options are. What type of
24 options did you have in mind?

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1 A. Whether I can sue this bastard for the
2 egregious, what he called, Hitler parody. That was
3 the main thing I was interested in personally.

4 Q. What about options not for you
5 personally but for the university?

6 A. Whether the university had to allow that
7 parody, what this bastard called a parody, to be out
8 on YouTube.

9 Q. Were you specifically interested in
10 possible discipline for Professor Fagal?

11 A. Specifically what do you mean?

12 Q. Written warning, oral warning,
13 suspension, termination. You know what discipline
14 means, right?

15 A. All of those things should have been on
16 the table.

17 Q. Okay.

18 MR. COHEN: Let's mark this as Levine
19 Exhibit 7.

20 (Levine-7, E-mail chain dated Tuesday,
21 January 17, 2012, Bates Nos. DEF002734-2735, is
22 received and marked for identification.)

23 Q. And, again, Dr. Levine, could you read
24 this to yourself and let me know when you're

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1 finished?

2 A. Finished.

3 Q. Okay. Again, here you're asking Pat for
4 possible responses for you and Marywood, correct?

5 A. Correct.

6 Q. And Dr. Dunleavy responds that
7 internally you can file a formal complaint under the
8 civil rights policy, correct?

9 A. Correct.

10 Q. Did you ever do that?

11 A. No.

12 Q. Why not?

13 A. I'm not sure. It is a mistake. I
14 should have sued the bastard for defamation of
15 character. I'm told I can't do that now, but I
16 should have gotten that bastard for that.

17 Q. Well, I'm not referring to any possible
18 suit. I'm specifically referring to the civil rights
19 policy. You said you didn't file one and you regret
20 it?

21 A. I don't regret not filing a civil
22 rights. I regret not suing this bastard for
23 defamation of character. That's what I said.

24 Q. And why didn't you file a complaint
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1 under the civil rights policy?
 2 A. I don't remember why.
 3 MR. COHEN: Let's make this Levine
 4 Exhibit 8, please.
 5 (Levine-8, E-mail chain dated Sunday,
 6 January 22, 2012, Bates Nos. DEF002759-2760, is
 7 received and marked for identification.)
 8 Q. And could you read this to yourself, as
 9 well, and let me know when you're finished?
 10 A. Finished.
 11 Q. Do you recognize this exchange of
 12 e-mails, Dr. Levine?
 13 A. Yes.
 14 Q. Now, the first e-mail in the exchange is
 15 from you to Patricia Dunleavy and I'm guessing Mike
 16 Foley, correct?
 17 A. Correct.
 18 Q. And here you're kind of -- you're
 19 discussing plans for bringing Professor Fagal in to
 20 meet with President Munley, correct?
 21 A. Correct.
 22 Q. And the first line in this e-mail says,
 23 "I just finished chatting with Sister Anne," right?
 24 A. Correct.

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1 result of this bastard's Nazi video, portraying me as
 2 a Nazi, as well as involving my family members.
 3 Sister Anne, out of the kindness of her heart,
 4 decided it would be appropriate not to have me there
 5 to spare me that. Shalom. Mother fucker.
 6 Q. Dr. Levine, I understand you're upset.
 7 Is it really necessary to continue calling him
 8 bastard throughout the entire deposition, calling me
 9 a mother fucker? Or are you calling him a mother
 10 fucker?
 11 A. I don't understand how you can defend
 12 this bastard.
 13 Q. Well, I am, and you're here, and do we
 14 have to continue with, you know, berating him?
 15 A. It's my option, isn't it?
 16 MS. PEET: He's very emotional about
 17 this.
 18 MR. COHEN: I know.
 19 MS. PEET: As well as if I were in a
 20 video, you were in a video. We can't control how
 21 people are going to feel. And this brings up all
 22 sorts of emotion again.
 23 If you can refrain from using the
 24 language. We all understand how you feel, by all
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1 Q. So that's, in fact, true. You did chat
 2 with her?
 3 A. Obviously.
 4 Q. For how long?
 5 A. For how long did we have a chat?
 6 Q. Yes.
 7 A. I don't know.
 8 Q. Do you remember the substance of your
 9 conversation?
 10 A. Yes.
 11 Q. Could you convey it to me in as much
 12 detail as possible?
 13 A. Yes.
 14 Q. Please do so.
 15 A. Sister Anne was interested in having
 16 Fagal brought into the office to discuss disciplinary
 17 action concerning the video. She wanted my input, as
 18 was appropriate being that I was vice president of
 19 academic affairs at the time, and we discussed the
 20 strategy to have Fagal come in and be interviewed.
 21 Q. What was your input?
 22 A. My input was that was appropriate to
 23 have him come in to be interviewed. I was not there
 24 because of the angst and anxiety that I felt as a
 MAGNA LEGAL SERVICES

1 means, but if -- I get that you're emotional.
 2 BY MR. COHEN:
 3 Q. So my question is: Do you think you
 4 could refrain from continuing to call my client
 5 bastard, calling me and/or my client mother fucker,
 6 throughout the rest of the deposition?
 7 A. I'm not sure.
 8 Q. Do we really need to get the judge
 9 involved?
 10 A. I don't know.
 11 Q. Okay. So do you want to take a break?
 12 A. I'm good.
 13 Q. You're good? All right.
 14 So we just finished talking about
 15 various plans for bringing in Dr. Fagal. You talked
 16 about how you had a conversation with President
 17 Munley about it before sending this e-mail. Did you
 18 communicate about your plans to bring Professor Fagal
 19 in to meet with President Munley with anyone other
 20 than President Munley, Patricia Dunleavy, or
 21 Dr. Foley?
 22 A. I don't believe so.
 23 Q. Okay. Ultimately do you remember, in
 24 fact -- I know you weren't there, but are you aware
 MAGNA LEGAL SERVICES

1 that on January 23rd, 2012, Professor Fagal was
 2 brought in to meet with President Munley, Dr. Foley
 3 and Patricia Dunleavy?

4 A. Yes, I'm aware of it.

5 Q. Okay. Are you aware at that meeting
 6 Professor Fagal was suspended?

7 A. Yes.

8 Q. Prior to that meeting on January 23rd,
 9 2012, do you know whether President Munley had a --
 10 was planning to suspend Professor Fagal?

11 MS. PEET: Objection to the form. Calls
 12 for speculation. You can answer.

13 A. I don't know.

14 Q. Did she tell you that?

15 A. Could you repeat the question?

16 Q. Sure. Prior to the January 23rd, 2012
 17 meeting with Professor Fagal, President Munley,
 18 Dr. Foley and Patricia Dunleavy, did President Munley
 19 tell you that she intended to suspend Professor
 20 Fagal?

21 A. She told me that that was one of the
 22 options.

23 Q. Did anyone else in Marywood's
 24 administration tell you that that was an option,

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1 President Munley.

2 Q. Okay. What exactly did you or President
 3 Munley say about possible termination of Professor
 4 Fagal?

5 A. I can't answer exactly from your
 6 question.

7 Q. In as much detail as possible?

8 A. We talked about the possibility of Fagal
 9 being suspended and/or terminated. I was certainly
 10 on board with either/or both. I thought what he did
 11 was so egregious that that was a legitimate outcome
 12 pending the conversation with the meeting on Monday.

13 Q. Do you recall anybody else in Marywood's
 14 administration or cabinet other than yourself and
 15 President Munley recommending that Professor Fagal be
 16 terminated? This is prior to the January 23rd
 17 meeting.

18 A. I don't remember for sure.

19 Q. We're going to come back to this e-mail
 20 from you to Dr. Dunleavy and Dr. Foley, the first
 21 e-mail in this chain, and in the second paragraph,
 22 first sentence, you wrote, "Mike, at about 8:45 you
 23 will go down to Fred's office to let him know that
 24 Sister Anne would like to meet with him at 9:00 in

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1 suspending Professor Fagal?

2 A. I don't remember.

3 Q. Again, prior to this meeting, had you
 4 recommended that Professor Fagal be suspended?

5 A. In my conversation with President
 6 Munley, that came up.

7 Q. Do you remember any more detail other
 8 than suspending him came up?

9 A. I was certainly on board with it knowing
 10 what I knew, but I knew there was more that would
 11 come out of the interview.

12 Q. So you were on board with it, the
 13 suspension, prior to the meeting?

14 A. From what -- yes.

15 Q. Now, prior to the January 23rd, 2012
 16 meeting, were you also aware of a plan to seek the
 17 termination of Professor Fagal?

18 MS. PEET: Objection,
 19 mischaracterization of testimony. It implies that
 20 there was such a plan. You can answer.

21 A. That was certainly a possibility.

22 Q. In your mind or did you discuss it with
 23 someone?

24 A. Both, in my mind and in discussions with

MAGNA LEGAL SERVICES

1 her office." Did I read that correctly?

2 A. Correct.

3 Q. What was the reason for providing
 4 Professor Fagal only 15 minutes' notice of the
 5 meeting with President Munley?

6 MS. PEET: Objection to the form. You
 7 can answer.

8 A. I don't know. I don't remember.

9 Q. Now, you said earlier that President
 10 Munley spared you from the meeting, correct?

11 A. Correct.

12 Q. Did you want to attend?

13 A. Yes and no.

14 Q. Ultimately why did you decide not to
 15 attend the meeting?

16 MS. PEET: Objection to the form. You
 17 can answer.

18 A. She asked me not to. I also thought
 19 with the wound much fresher than it is right now --
 20 do you think my responses at this time are
 21 problematic? I lost people in the fucking Holocaust.

22 Q. We'll move on to the next e-mail in the
 23 chain. This is just Dunleavy saying, "Sounds good,"
 24 and then the next e-mail from you to Patricia

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<p>1 Dunleavy, January 21st, 2012, at 10:33 p.m. Do you 2 see that?</p> <p>3 A. Yes, I do.</p> <p>4 Q. And here you tell Dr. Dunleavy that 5 Professor Fagal attempted to call you at home. You 6 didn't pick up. He left a message, correct?</p> <p>7 A. That's what the e-mail says, yes.</p> <p>8 Q. And then Patricia Dunleavy says, "That's 9 interesting. Save the message or at least keep a 10 record," correct?</p> <p>11 A. Yes, that's what the e-mail says, yes.</p> <p>12 Q. Did you save the message?</p> <p>13 A. I may have saved it but I don't anymore 14 have it. Phones go the way they go.</p> <p>15 Q. As phones --</p> <p>16 A. As phones go the way they go, new 17 machines, and it's gone.</p> <p>18 Q. So this was a -- was it like a digital 19 voicemail or an answering machine?</p> <p>20 A. Answering machine.</p> <p>21 Q. So was it stored on a tape or was it 22 stored digitally?</p> <p>23 A. You know, I don't remember what I had at 24 the time. It's not my current phone.</p>	<p>1 did you make a written recommendation that Professor 2 Fagal be suspended?</p> <p>3 A. I don't remember, but as I said before, 4 if I did, I'm sure you have it.</p> <p>5 Q. Did you make a written recommendation of 6 any other type of discipline other than suspension 7 prior to the January 23rd, 2012 meeting?</p> <p>8 A. I don't remember, but, again, if I did, 9 I'm sure you have it.</p> <p>10 Q. So your role, if any, in the decision to 11 suspend Professor Fagal, would it be fair to say 12 would be limited to your conversation with President 13 Munley before the January 23rd, 2012 meeting?</p> <p>14 A. No.</p> <p>15 MS. PEET: Objection to the form. Go 16 ahead.</p> <p>17 A. No, it would not be fair to say that.</p> <p>18 Q. Why not?</p> <p>19 A. We had a conversation before the 20 meeting. We had a conversation after the meeting, 21 and so that my role was both before -- pre and post 22 meeting.</p> <p>23 Q. You had a conversation with President 24 Munley after the January 23rd, 2012 meeting?</p>
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<p>1 Q. Do you remember the substance of the 2 message that Professor Fagal left?</p> <p>3 A. I remember the substance because I'm 4 reading the e-mail, and it reminds me that the 5 substance was that your client wanted to talk off the 6 record.</p> <p>7 Q. You didn't call him back, correct?</p> <p>8 A. Correct.</p> <p>9 Q. Other than actually having the message 10 itself, did you record the content in some way. 11 Like, did you write down what he said anywhere, other 12 than this e-mail?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Now, coming back to the January 23rd, 15 2012 meeting, you said before the meeting you had 16 discussed possible discipline for Professor Fagal 17 with President Munley, correct?</p> <p>18 A. Correct.</p> <p>19 Q. The issue of a suspension came up in 20 that conversation, correct?</p> <p>21 A. Yes.</p> <p>22 Q. You said that you supported it, correct?</p> <p>23 A. Yes, but I supported also termination.</p> <p>24 Q. Prior to the January 23rd, 2012 meeting,</p>	<p>1 A. Yes.</p> <p>2 Q. Okay. Provide to me the detail of that 3 conversation to the best of your ability.</p> <p>4 A. As I remember it, we talked about what 5 transpired at the meeting and we talked about 6 suspension and/or termination. I was on board with 7 termination after the meeting. I was good with 8 termination. I thought he should have been 9 terminated. I agreed with her, with that 10 recommendation or that idea.</p> <p>11 Q. How soon after the January 23rd, 2012 12 meeting did you have this conversation?</p> <p>13 A. I can only speculate in answer to that.</p> <p>14 Q. All right.</p> <p>15 THE WITNESS: I'm getting more water. 16 Feel free to continue.</p> <p>17 MS. PEET: Do you need a break?</p> <p>18 THE WITNESS: No, I'm good.</p> <p>19 BY MR. COHEN:</p> <p>20 Q. So we established that President Munley 21 suspended Professor Fagal. You were on board with 22 it, correct?</p> <p>23 A. Suspended, terminated, as well, I think.</p> <p>24 Q. We'll get to the termination.</p>
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1 A. Yes, I was on board.
 2 Q. Did you object to President Munley that
 3 it was your job to suspend Professor Fagal?
 4 MS. PEET: Objection to form. You can
 5 answer.
 6 A. I don't remember objecting.
 7 Q. Did you tell President Munley that it
 8 was your job to suspend Professor Fagal?
 9 MS. PEET: Objection to the form.
 10 Assumes facts not in evidence. You can answer.
 11 A. I believe we discussed it.
 12 Q. Okay. Can you elaborate on your
 13 discussion?
 14 A. We agreed that the situation was so
 15 egregious that she as -- that she as president
 16 certainly had the ability to do that with my input,
 17 as I gave it.
 18 Q. But on more routine, less egregious
 19 cases, would you agree that it was your job and your
 20 job alone to suspend employees?
 21 MS. PEET: Objection to the form. You
 22 can answer.
 23 A. Under normal -- yes, yes. Answer it
 24 that way.

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1 then and there?
 2 MS. PEET: Objection to the form. You
 3 can answer.
 4 A. I was in a car driving back from
 5 Michigan. My wife was driving. I was shocked. She
 6 was shocked.
 7 Q. Okay. As soon as you finished your car
 8 ride -- let me put it this way. When did you get
 9 back to Marywood's campus, if you remember?
 10 A. I'm speculating the next day.
 11 Q. So that would be approximately
 12 January 17, 2012?
 13 A. I believe that's correct.
 14 MR. COHEN: Let's make this Levine
 15 Exhibit 9.
 16 (Levine-9, Letter dated January 24,
 17 2012, with attachments, Bates Nos. DEF000166-187, is
 18 received and marked for identification.)
 19 BY MR. COHEN:
 20 Q. I don't want you to read this whole
 21 thing. Do you recognize it?
 22 A. I do recognize it.
 23 Q. Okay. This is a letter that President
 24 Munley sent to Professor Fagal on January 24, 2012,

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1 Q. Prior to Professor Fagal's suspension on
 2 January 23rd, 2012, did you believe that Professor
 3 Fagal posed an immediate harm to himself or to
 4 others?
 5 A. Yes.
 6 Q. Okay. What type of harm?
 7 A. Emotional harm. He harmed me and
 8 probably others.
 9 Q. Do you remember exactly when Professor
 10 Fagal sent his e-mail, you know, with the links to
 11 the videos? I think it was among the exhibits.
 12 A. Yeah.
 13 MS. PEET: Do you just want to point him
 14 to it?
 15 A. January 13, 2012, it appears.
 16 Q. And when did you learn of it?
 17 A. I believe I learned of it when Margaret
 18 Gannon sent me an e-mail with the link. That may
 19 well be here.
 20 Q. January 16, 2012?
 21 A. Yes, correct.
 22 Q. So if you saw Professor Fagal's videos
 23 on January 16, 2012, and you thought that he posed an
 24 immediate harm, why didn't you just suspend him right

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1 correct?
 2 A. Correct.
 3 Q. And she here is recommending his
 4 termination, correct?
 5 A. Correct.
 6 Q. And this is a day after the meeting,
 7 January -- which was on January 23rd, 2012, correct?
 8 A. Yes. Is that correct? Yes, correct.
 9 Q. Did you contribute or provide any input
 10 into this letter before it was sent?
 11 A. Yes.
 12 Q. What was your contribution?
 13 A. I thought we discussed that.
 14 Q. Well, we discussed you had several
 15 conversations. I'm wondering if there was more.
 16 A. I believe the conversation that I had
 17 with Sister Anne after the meeting, which was
 18 discussed, was some input, and as I recall, I saw
 19 this letter before it was sent and was final. I
 20 believe that.
 21 Q. Did you write any part of this letter?
 22 A. I don't believe I wrote or edited any
 23 part of this letter.
 24 Q. Do you know when President Munley began

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1 generating this letter?

2 A. No.

3 Q. Prior to this letter going out, did you
4 make any written recommendation to terminate
5 Professor Fagal?

6 A. I don't believe so, but if I did, I'm
7 sure you'd have it.

8 MR. COHEN: Let's have this marked as
9 Levine Exhibit 10.

10 (Levine-10, Document headed "Talking
11 Points for Board," Bates Nos. DEF000145-146, is
12 received and marked for identification.)

13 Q. And do you recognize this document?

14 A. Not immediately. Give me a second.

15 Yes.

16 Q. These are "talking points for the
17 board," correct?

18 A. Correct.

19 Q. Did you have any input into drafting
20 these talking points?

21 A. I don't believe so.

22 Q. But you have seen this before?

23 A. Yes.

24 Q. In reference to this litigation or

MAGNA LEGAL SERVICES

1 before that?

2 MS. PEET: Just by way of clarification,
3 I think what he's trying to get at is did you see it
4 in preparing for this deposition or parts of this
5 litigation or in January or thereabouts 2012?

6 A. I believe I saw it in January 2012.

7 Q. If you look down towards the middle of
8 the first page, it says Thursday, January 19, 2012,
9 and then there's a black block, and then there's a
10 second bullet point that says, "Dr. Levine and
11 Dr. Dunleavy reviewed AAUP policies," right?

12 A. Right.

13 Q. Is that accurate? I know it says that.
14 I want to know if that actually happened.

15 A. Yes.

16 Q. Why would you review AAUP policies?

17 A. To make sure we were not doing anything
18 that was -- could be sanctioned by AAUP.

19 Q. Did you review the progressive
20 discipline policy that Marywood had in place at the
21 time?

22 A. I don't remember but I suspect we did.

23 MR. COHEN: Let's have this marked as
24 Levine Exhibit 11.

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1 (Levine-11, Document headed "Talking
2 Points for Meeting," Bates No. DEF000147, is received
3 and marked for identification.)

4 Q. Do you recognize this document?

5 A. No, I don't recognize this document. I
6 may have seen it, I just -- I don't recognize it.

7 Q. Well, that's all I need to know about
8 that.

9 MR. COHEN: Let's have this marked as
10 Levine Exhibit 12, please.

11 (Levine-12, E-mail dated Monday,
12 January 30, 2012, Bates No. DEF002756, is received
13 and marked for identification.)

14 Q. Could you read this to yourself and let
15 me know when you're finished, please?

16 A. Finished.

17 Q. What did you mean when you said to
18 Joseph Garvey, "I await the massive flare-up to
19 come"?

20 A. This.

21 Q. You expected there would be litigation?

22 A. Mine or his.

23 MR. COHEN: Let's mark this as Levine
24 Exhibit 13.

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1 (Levine-13, E-mail dated Monday,
2 April 2, 2012, Bates No. DEF002380, is received and
3 marked for identification.)

4 Q. And could you read this to yourself?

5 A. Finished.

6 Q. Barbara McNally was your assistant at
7 the time?

8 A. She was one of -- yes, yes.

9 Q. Did you tell Miss McNally Professor
10 Fagal would be leaving Marywood before the date of
11 this e-mail?

12 A. Probably.

13 Q. You thought that before Professor
14 Fagal's disciplinary procedures were over, it was a
15 foregone conclusion he would be out of Marywood?

16 MS. PEET: Objection to the form. You
17 can answer.

18 A. I thought that was a distinct
19 possibility, yeah.

20 Q. Do you know what an interrogatory is?

21 A. No.

22 Q. As far as legal proceedings go?

23 A. No.

24 Q. Let me just explain briefly. An

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1 interrogatory is just a question in writing that one
 2 party in litigation can send to another and it has to
 3 be answered under oath, kind of like the written
 4 version of what we're doing here.

5 So before today I had sent Marywood an
 6 interrogatory -- several interrogatories, and they
 7 had been answered, and some of them pertain to you
 8 and I want to see whether they're accurate.

9 So question number one, in paragraph
 10 number 20 of defendant's answer to plaintiff's
 11 amended complaint and affirmative and other defenses,
 12 hereinafter your answer -- and I realize you probably
 13 haven't seen these documents --

14 A. Correct.

15 Q. -- you admitted, I'm talking about
 16 Marywood admitted, to removing some of plaintiff's
 17 posters announcing the FIRE speaker. "Did you or
 18 anyone working for you instruct or suggest that these
 19 posters be removed? If so, who made this instruction
 20 or suggestion? If instruction or suggestion was
 21 oral, please state its content in as close to
 22 verbatim form as possible."

23 The answer that we received, and I want
 24 you to let me know if it's accurate, is: "Defendant

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1 Marywood is unaware of the identity of the individual
 2 who removed plaintiff's posters announcing the FIRE
 3 speaker other than Dr. Alan Levine who removed one
 4 poster. Additionally, defendant is unaware of anyone
 5 who instructed or suggested that plaintiff's FIRE
 6 speaker posters be removed."

7 A. I believe that's correct. I did remove
 8 a poster.

9 Q. Okay. Question number four is: "Did
 10 your vice president for academic affairs, Dr. Alan
 11 Levine, participate in any way in the decision to
 12 suspend Professor Fagal or to maintain the suspension
 13 thereafter? If so, please describe Dr. Levine's
 14 participation in as much detail as possible."

15 The answer that was provided is:

16 "Dr. Levine supported President Munley's decision to
 17 suspend Professor Fagal and was aware of and helped
 18 orchestrate the January 23rd, 2012, meeting where
 19 Professor Fagal was suspended." Is that accurate?

20 A. Accurate.

21 Q. Do you have anything more to add to
 22 that?

23 A. No.

24 Q. The poster that you removed, was it
 MAGNA LEGAL SERVICES

1 stamped approved?

2 A. I don't remember. Probably it was.

3 Q. Why would you remove an approved poster?
 4 MS. PEET: Objection. He said he's not
 5 sure, is the appropriate testimony, so you're making
 6 assumptions.

7 MR. COHEN: You can answer.

8 THE WITNESS: Should I answer that?

9 MS. PEET: If you can.

10 BY MR. COHEN:

11 Q. If you can.

12 A. So would you just repeat it one more
 13 time?

14 Q. Why would you remove an approved poster?

15 MS. PEET: Same objection, but you can
 16 answer.

17 A. I wanted to bring it to cabinet so we
 18 could have a discussion.

19 MR. COHEN: Okay. I'm finished,
 20 Dr. Levine. But, Stephanie, do you have any
 21 questions? Stephanie?

22 MS. PEET: I'm thinking.

23 MR. COHEN: I didn't know whether you
 24 heard me.

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1 CROSS-EXAMINATION BY MS. PEET:

2 Q. Dr. Levine, why did you want to discuss
 3 the poster at cabinet?

4 A. The \$50 raffle was something I had never
 5 seen nor was it something that Marywood does. We
 6 don't give money to have people attend classes.

7 Q. Did your bringing the poster to the
 8 cabinet have anything to do with the fact the speaker
 9 was from the organization called FIRE?

10 A. No, I could care less. What do I care
 11 about that?

12 Q. I assume you viewed the videos at that
 13 Dr. Fagal posted on YouTube?

14 A. I'm sorry. Did you say have I seen
 15 them?

16 Q. Did you view them?

17 A. I viewed them.

18 Q. And what was your reaction?

19 A. I was horrified. They not only defamed
 20 me, they defamed my wife. They brought my wife into
 21 this fucking thing. And I lost people in the
 22 Holocaust. I'm Jewish. I was horrified that this
 23 was going out to the world. Are you -- are you
 24 fucking kidding me?

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<p>1 Q. Did you share your -- these sentiments 2 with Sister Munley? 3 A. Yeah. 4 Q. Prior to the suspension of Dr. Fagal? 5 A. Yes. 6 Q. As we sit here today, are you -- I 7 assume you're aware that Dr. Fagal was ultimately 8 terminated from his employment at Marywood 9 University, correct? 10 A. Yes, I am. 11 Q. And as we sit here today, do you find 12 that decision to be appropriate? 13 A. Very much so. 14 Q. Did you support the decision to 15 terminate Dr. Fagal's employment with Marywood? 16 A. I did then and I do now. 17 MS. PEET: No other questions. 18 MR. COHEN: I have no follow-up. 19 (Whereupon, at 11:05 a.m., the 20 deposition of Alan Michael Levine concluded.)</p>	<p>1 INSTRUCTIONS TO WITNESS 2 3 Please read your deposition over 4 carefully and make any necessary corrections. You 5 should state the reason in the appropriate space on 6 the errata sheet for any corrections that are made. 7 After doing so, please sign the errata 8 sheet and date it. 9 You are signing same subject to the 10 changes you have noted on the errata sheet, which will 11 be attached to your deposition. 12 It is imperative that you return the 13 original errata sheet to the deposing attorney within 14 thirty (30) days of receipt of the deposition 15 transcript by you. If you fail to do so, the 16 deposition transcript may be deemed to be accurate and 17 may be used in court. 18 19 20 21 22 23 24</p>
<p>MAGNA LEGAL SERVICES</p>	<p>Page 55</p>
<p>1 CERTIFICATE 2 3 I HEREBY CERTIFY that the witness was 4 duly sworn by me and that the deposition is a 5 true record of the testimony given by the 6 witness. 7 8 9 10 Judy A. Black 11 Registered Professional Reporter 12 Dated: September 16, 2016 13 14 15 16 (The foregoing certification of this 17 transcript does not apply to any reproduction of 18 the same by any means, unless under the direct 19 control and/or supervision of the certifying 20 reporter.) 21 22 23 24</p>	<p>1 ----- 2 ERRA T A 3 ----- 4 PAGE LINE CHANGE 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24</p>
<p>MAGNA LEGAL SERVICES</p>	<p>Page 57</p>

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1 ACKNOWLEDGMENT OF DEPONENT
2

3 I, Alan M. Levine, do hereby certify
4 that I have read the foregoing pages and that the same
5 is a correct transcription of the answers given by me
6 to the questions therein propounded, except for the
7 corrections or changes in form or substance, if any,
8 noted in the attached Errata Sheet.

9 Alan M. Levine Date
10

11 Subscribed and sworn
12 to before me this
13 day of , 2016

14 My commission expires:

15 Notary Public
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1 LAWYER'S NOTES
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Exhibit 44



MARYWOOD UNIVERSITY
SCRANTON, PA 18509-1598
TEL: (570) 348-6219
www.marywood.edu/english

DEPARTMENT OF ENGLISH

Dr. Frederick Fagal
17 East Lake Street
Skaneateles, NY, 13152



Sent via email to fffagal@yahoo.com, as well as regular mail.

March 26, 2012

Dear Dr. Fagal,

As Chair of the Faculty Grievance Committee, I write to inform you that the committee has reviewed thoroughly your grievance about your recent suspension and recommendation for termination of employment and tenure, namely, your arguments:

1. That you were improperly suspended by President Munley; the action should have originated with Dr. Levine.
2. That you were improperly suspended because you have not been a cause of immediate harm to yourself or to others.
3. That President Munley moved improperly to terminate your employment and tenure because you should have had a chance for remediation.
4. That President Munley moved improperly to terminate your employment and tenure because only the Vice President can take such action.
5. That you have not had an opportunity to convene an ad hoc committee to appeal the suspension.

I now write to inform you that in reviewing each of these grievances, we have found no evidence of improper action on President Munley's part which would constitute a legitimate grievance.

I will notify President Munley of the decision as well.

Sincerely,

Erin A. Sadlack, Ph.D.
Chair, Faculty Grievance Committee

cc: Sr. Gail Cabral, IHM, Ph.D., Faculty Senate President

Exhibit 45

From: [Frederick Fagal](#)
To: annemunley@marywood.edu
Subject: Regarding: Ad Hoc Faculty Committee
Date: Thursday, March 29, 2012 10:01:54 AM

17 East Lake Street
Skaneateles, NY 13152

March 29, 2012

Via E-Mail & USPS First-Class Mail

President Anne Munley, IHM
2300 Adams Avenue
Marywood University
Scranton, Pennsylvania 18509

Re: Ad Hoc Faculty Committee

Dear President Munley:

Yesterday I received a letter from Dr. Erin A. Sadlack stating that the Faculty Grievance Committee

“found no evidence of improper action on [your] part which would constitute a legitimate grievance.” I strongly disagree with that Committee’s “finding.” In any case, I am again exercising my

right under Marywood University’s Progressive Discipline policy to convene an ad hoc committee to

appeal your suspension of me as well as your recommendation to terminate my employment and tenure.

I grant permission for Marywood University to release your “Recommendation for Termination

and Statement of Charges” dated February 8, 2012 to an ad hoc committee in order to appeal your

decision to suspend me as well as your recommendation to terminate my employment and tenure. To be

clear, I am requesting that the ad hoc committee be convened twice—once to appeal my suspension and

once to appeal your recommendation to terminate my employment and tenure.

If you have any questions, please do not hesitate to contact me or my attorney, Jonathan Z. Cohen.

Sincerely,

Frederick F. Fagal, Jr.

Exhibit 46

LAW OFFICES of
DAVID G. CONCANNON, LLC

February 17, 2012

Via E-Mail, Facsimile & USPS First-Class Mail

William J. Anthony, Esquire
 Jackson Lewis LLP
 90 State House Square, 8th Floor
 Hartford, Connecticut 01603

Re: Employment status of Dr. Frederick F. Fagal, Jr.

Dear Mr. Anthony:

I have closely considered your letter of February 9, 2012 and President Munley's letter dated the day prior. I have also reviewed the cases that you cited, among many others. My conclusions are that:

- (1) Marywood cannot, at least under these circumstances, undo the contractually incorporated policies and procedures that it alone has drafted and reaffirmed;
- (2) Marywood remains vulnerable to a breach-of-contract action alleging at least the procedural irregularities listed in my letter to President Munley dated February 2, 2012;
- (3) Your letter of February 9, 2012 and President Munley's letter dated the day prior added additional grounds for such a breach-of-contract claim, namely a denial of Dr. Fagal's right to convene an ad hoc committee to review the propriety of President Munley's suspension of him commencing on January 23, 2012; and
- (4) Marywood's denial of Dr. Fagal's right to convene an ad hoc committee to review the propriety of his suspension as well as its implied denial of a Statement of Charges regarding the same provide him with independent claims that the University has failed to apply fundamentally fair procedures to him. See PSI Upsilon of Phila. v. Univ. of Pa., 591 A.2d 755, 758 (Pa. Super. Ct. 1991) (citing Boehm v. Univ. of Pa. Sch. of Veterinary Med., 573 A.2d 575 (Pa. Super. Ct. 1990)).

To repeat, Dr. Fagal has elected to convene two separate ad hoc committees pursuant to Marywood's official policy: one for President Munley's decision to suspend him and the other, if necessary, for her recommendation to terminate him. See Policies and Procedures Manual – Marywood University, "Progressive Discipline," <http://www.marywood.edu/policy> ("PPM"). As I have already explained, the propriety of a faculty member's termination depends, in part, upon

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the propriety of his preceding suspension. See id. Therefore, Dr. Fagal will not sign the “Release of Personal Information” proffered by President Munley or any other document that would permit her to circumvent a review of the propriety of his suspension. If President Munley drafts a separate Statement of Charges for Dr. Fagal’s suspension, Dr. Fagal will consider signing an appropriate “Release of Personal Information.”

In the meantime, Dr. Fagal will pursue all internal remedies available to him prior to filing a lawsuit. Dr. Fagal accordingly intends to file a faculty grievance against President Munley. I enclose a copy of Marywood’s Faculty Grievances and Appeals policy for your convenience.* As suggested therein, Dr. Fagal has begun consulting the President of Marywood’s Faculty Senate for assistance in contacting the Faculty Grievance Committee Chair. Please be advised of the Non-Retaliation provisions of Marywood’s Faculty Grievances and Appeals policy. If and when President Munley chooses to follow Marywood’s Progressive Discipline policy, Dr. Fagal will consider withdrawing his grievance against her.

Finally, Marywood’s position that its disciplinary process is “closed” and that I cannot participate “other than as an outside advisor” to Dr. Fagal finds no support in Marywood’s Progressive Discipline policy. See id.

Sincerely,



Jonathan Z. Cohen, Esquire

* Given that the President of Marywood may be called upon to review an Ad Hoc Hearing Committee’s recommendation under this policy, Dr. Fagal may request that the University’s Board of Trustees intervene. See PPM, “Delegation to the President.” President Munley has already violated the authority delegated to her by the Board in this matter, necessitating Dr. Fagal’s grievance in the first place.



Faculty Grievances and Appeals



Policy Statement

As an institution of higher education, Marywood University brings together a faculty, administration, and governing board united in a common bond of academic purpose. Essential to the fulfillment of this purpose is a mutual recognition of institutional integrity and individual human rights, along with an understanding of the respective roles of the several entities which constitute this educational organization.

Circumstances may arise at times, however, wherein a grievant-- full-time, part-time, or pro-rata-- may question decisions which affect his/her professional role in the institution. To assist in the resolution of these matters, a series of guidelines for grievances is herein set forth.

Definitions

Grievance: A grievance refers to any disagreement between two parties. A grievance identifies a complaint one party has against another party for some alleged wrongful action on the part of the second party.

Grievant: A Grievant initiates a grievance.

Types of Issues That Can Be Grieved

It is understood that procedural rather than substantive factors provide appropriate areas of review, and the Faculty Grievance Committee will not attempt to substitute its judgment for that of the decision-maker(s) involved in the case.

Thus, the Faculty Grievance Committee will hear grievances concerning:

- 1) Allegations of violation of academic freedom resulting in: denial of tenure, promotion, or sabbatical leave; non-reappointment.
- 2) Allegations of impermissible discrimination. Tenured and non-tenured faculty are protected against illegal or unconstitutional discrimination, or on any basis not relevant to job performance, and includes, but is not limited to, race, sex, religion, national origin, age, disability, marital status, or sexual orientation.
- 3) Allegations of inadequate consideration resulting in: denial of tenure, promotion, or sabbatical leave; non-reappointment; or termination of employment due to retrenchment.
- 4) Allegations of violations of procedures used in rendering decisions in numbers 1 and 2 above as set forth in Chapter 2 of the *Faculty Handbook*.

Procedures regarding dismissal, suspension, and sanctions of faculty members are in the *Progressive Discipline*

FFF001688

policy.

Should a grievant allege cause for grievance in any matter not identified in the above guidelines, the grievant may consult the Faculty Grievance Committee. In such circumstances, the Committee's first decision is whether the complaint is appropriate and sufficiently serious to merit consideration.

Persons Against Whom Grievances May be Directed

Fundamentally, a grievance may arise from an allegation of improper implementation of a procedure or process leading to a decision. The person(s) or body who perform(s) that procedure or process is (are) the subject(s) of the grievance. Thus, a grievant may direct a grievance against the person(s) or body responsible for the decision identified herein.

The decisions or actions of the Faculty Grievance Committee or Ad Hoc Hearing Committee may not themselves be grieved.

Procedures

Informal Procedure

- 1) A member of the faculty must initially discuss a complaint with the person or body responsible for the action to which the grievant takes exception in order to determine if a resolution is possible.
- 2) A complaint must be presented within (10) calendar days of the occurrence or discovery of the alleged violation.
- 3) No grievance may be filed without the initiation of this informal complaint procedure.
- 4) If the grievance still exists after step one the grievant initiates a consultation with the Vice President for Academic Affairs in order to try to resolve the matter.

Formal Procedure for Filing a Grievance

- 1) The Faculty Grievance Committee is convened.

Faculty Grievance Committee

The Faculty Grievance Committee consisting of three tenured faculty members and two alternates (also tenured) is specifically charged with responsibility for resolving matters of grievance and appeal. The Faculty Senate conducts the election of this committee. Faculty currently serving on the Rank and Tenure Committee or the Faculty Development Committee are not eligible for election to this committee.

The term of each member extends for three years, with one person replaced each year. An alternate will be identified at each election. Any member of the Grievance Committee who has had any prior involvement in a case under consideration must recuse him/herself. The Grievance Committee shall annually elect a chair-elect who will succeed the Chair.

Grievance Process

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The grievant may consult the President of Faculty Senate for assistance in contacting the Faculty Grievance Committee Chair. The Chair should be provided with a written statement setting forth, in detail, the nature of the grievance or appeal and identifying the person(s) or body against whom the grievance or appeal is directed; this document may also include a proposal for resolving the issue. A grievance must be filed within thirty (30) calendar days of the occurrence or discovery of the alleged violation but not fewer than five (5) calendar days after the initiation of the informal complaint.

In considering the grievance or appeal, the Faculty Grievance Committee will take the following steps:

- 1) The Committee notifies the decision maker(s) that a grievance has been filed.
- 2) The Grievance Committee requests from the grievant written information regarding the issues. The Grievance Committee also requests from the decision maker(s) written statements describing the basis for the decision being appealed or grieved, as well as any attempts to settle the matter informally. This information shall be held in confidence by the Grievance Committee. At this point in the process, the information gathered is solely for review by the Committee and is not to be shared with either party involved.
- 3) At any point, the Grievance Committee may request additional information in writing from the grievant and from the decision-maker(s).
- 4) If after completing the above steps, the Committee determines that the grievance is improper or unsubstantial, or that sufficient time had not yet been allowed for its normal resolution, or that there is no evidence of improper action on the part of the decision maker(s) which would constitute a legitimate grievance, the Committee will communicate this determination to the grievant and the decision maker(s).
- 5) If the Grievance Committee determines that there was inadequate consideration or violation of procedures (see No. 3 and 4 under Types of Issues Which Can Be Grieved above), the Committee will return the case to the decision maker for reconsideration.
- 6) If the grievance is deemed appropriate for mediation, the Chair will appoint a Mediator from the University. The Mediator does not represent either party. Any party may object to the Mediator on the grounds of actual or apparent bias or conflict of interest and submit such objections to the Chair in writing. The Chair will review the objections and may replace the mediator.
- 7) The Offices of the Vice President for Academic Affairs or Human Resources may be consulted by the Mediator on mediation procedure or other matters involved in the grievance.
- 8) The Mediator shall try to resolve the grievance within thirty (30) calendar days of formal submission to the chair. With the consent of both parties, the period of mediation may be extended for a short period of time. If the grievance is not resolved within the thirty (30) calendar days, the mediator will advise the chair of the committee in writing that that the issue has not been resolved. If a mutually accepted agreement is reached, this will be communicated to the chair of the committee.
- 9) Grievances not appropriate for mediation or grievances not resolved through mediation shall be referred to the Ad Hoc Hearing Committee. All evidence collected will be passed on to the Ad Hoc Hearing Committee.
- 10) If the Faculty Grievance Committee recommends a formal hearing, in cases of violation of academic freedom or impermissible discrimination, an Ad Hoc Hearing Committee will be created to conduct a formal

investigation and to arrive at a recommendation for resolving the issue.

11) The Grievance Committee will make a summary report of its activities at the end of each academic year to the Faculty Senate. No details relevant to the privacy of the participants in any cases will be included in this report.

Ad Hoc Hearing Committee

The Ad Hoc Hearing Committee shall consist of three members, selected by the Faculty Senate Executive Council, from a standing committee of fifteen tenured Faculty Members elected for one-year terms by the faculty at large. The Faculty Senate conducts the election of this committee.

Each party shall have two challenges without stated cause regarding membership of the Ad Hoc Hearing Committee. No member of the Ad Hoc Hearing Committee shall have had any prior involvement in the case.

If the three-person Ad Hoc Hearing Committee cannot be chosen from the fifteen members of the standing committee, the Executive Council of the Faculty Senate is empowered to conduct a special election to obtain fifteen additional members with terms of one year.

The Ad Hoc Hearing Committee must select a chairperson.

Ad Hoc Hearing Procedures

1) The Ad Hoc Hearing Committee is empowered to gather information and documents specific to the case of the Grievant, conduct interviews, hold a hearing and take actions as are necessary to investigate the grievance to the extent that the law and University policy permit. The Ad Hoc Hearing Committee will provide recommendations in writing forty (40) calendar days from the date of its official appointment.

2) All Hearings are closed to anyone other than the parties and their advisors, members of the Ad Hoc Hearing Committee, and any witnesses invited to testify by the Committee. The hearing may be audio or video recorded and a written record will be maintained. The hearing is not a legal proceeding. At the beginning of the hearing, all procedures will be made known to the parties, and all information will be kept confidential.

3) Each party to the grievance may have one advisor during the hearing. The advisor may not participate in the hearing.

4) Strict rules of legal evidence will not be binding upon the Ad Hoc Hearing Committee and evidence of probative value in defining issues may be admitted.

5) The hearing record will be used exclusively as the basis for findings of fact and for arriving at a decision.

6) Upon reaching a decision on the issue and a recommendation for action, the Ad Hoc Hearing Committee will provide a summary written report to the petitioner, the person(s) named in the grievance, and the appropriate administrative officer and the President.

7) After receiving the recommendation of the Ad Hoc Hearing Committee, the appropriate administrative officer will review the recommendation and notify the Ad Hoc Hearing Committee and petitioner whether the recommendation has been accepted. If the recommendation of the Ad Hoc Hearing Committee is not

accepted by the appropriate administrative officer, the administrative officer will review it with the Ad Hoc Hearing Committee.

8) No details relevant to the privacy of the participants in the case will be included in the notice from the Hearing Committee. Public statements and publicity about the case by the participants will be avoided until the proceedings have been completed, including consideration by the President

Action by the President of the University

Following the recommendation of the Ad Hoc Hearing Committee, should the petitioner desire further consideration of the issue beyond the immediate administrative channels of the University, the President may be requested, within twenty calendar days, to review the case.

This review will be based on the record from the committee hearing and may provide opportunity for argument, oral or written, or both, by the principals. Then the President will then make the final decision.

Responsibility for Expenses Incurred in Grievance and Appeal

Expenses incurred by the grievant are the responsibility of the individual. These include, but are not limited to, the following:

Cost of an advisor.

Travel expenses for advisor, witnesses, or others engaged by petitioner.

Cost of preparing any documents and copies thereof.

Withdrawal of a Grievance

The grievance can be withdrawn at any point in the process.

Non-Retaliation

Grievants will not be adversely affected for exercising their right to file a grievance, regardless of outcome.

Grievants will not be subject to adverse consequences for either initiating a grievance or in presenting evidence on behalf of a grievant. Anyone who violates this mandate can be subject to disciplinary action, up to and including dismissal.

Related Policies

- [Academic Freedom](#)
- [Disability Grievance Procedures](#)
- [Civil Rights Policy](#)
- [Civil Rights Complaint Procedures](#)
- [Sabbatical Leave for Faculty Member](#)
- [Non-reappointment of Faculty Member](#)

- Promotion of Faculty Members
- Evaluation of Faculty Members
- Retrenchment of Faculty
- Tenure
- Progressive Discipline

History

10/02/92 - Proposal returned to committee of Faculty Senate by College Committee on Policy

11/13/92 - Proposed policy dated 3/13/92, as amended, recommended by College Committee on Policy to the President

04/26/93 - Presidential approval affirmed with publication of the President's Memo

03/20/98 - Revision proposed by Faculty Senate approved by the President of the University as recommended by the Policy Committee of the University

04/29/11 - Revision approved by the President of the University as recommended by the Policy Committee of the University

Mary T. Gardier Paterson, Esquire | Secretary of the University | mtgpaterson@marywood.edu

2300 Adams Avenue, Scranton, PA 18509

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Comments to Marywood University Web Development Office: webber@marywood.edu

Exhibit 47

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

- - -

FREDERICK F. FAGAL, JR.) CIVIL ACTION
)
 Plaintiff)
)
 v.) No.: 3:14-cv-02404-ARC
)
 MARYWOOD UNIVERSITY,)
) JUDGE CAPUTO
 Defendant)

- - -

Deposition of Helen Bittel, Ph.D.

Thursday, September 29, 2016

- - -

The deposition of Helen Bittel, Ph.D., called as a witness by the Plaintiff, pursuant to notice and the Pennsylvania Rules of Civil Procedure pertaining to the taking of depositions, taken before me, the undersigned, Christine A. Messner, a Notary Public in and for the Commonwealth of Pennsylvania, at 700 Lackawanna Avenue, Scranton, Pennsylvania 18503, commencing at 10:04 a.m., the day and date above set forth.

- - -

MAGNA LEGAL SERVICES
Seven Penn Center
1635 Market Street, 8th Floor
Philadelphia, Pennsylvania 19103

www.MagnaLS.com

866-624-6221

Page 2

Page 4

1 APPEARANCES:
 2 On behalf of the Plaintiff:
 3 JONATHAN Z. COHEN, LTD
 3 JONATHAN Z. COHEN, ESQUIRE
 4 175 Strafford Avenue, Suite 1
 4 Wayne, Pennsylvania 19087
 5

6 On behalf of the Defendant:
 6 JACKSON LEWIS, P.C.
 7 STEPHANIE J. PEET, ESQUIRE
 7 Three Parkway, 1601 Cherry Street, Suite 1350
 Philadelphia, Pennsylvania 19102
 8
 9 - - -
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 24

1 HELEN BITTEL, Ph.D., was called, and having been
 2 duly sworn, was examined and testified as follows:
 3 EXAMINATION
 4 BY MR. COHEN:
 5 Q Would you like to be called Doctor Bittel or
 6 Helen?
 7 A Helen is fine.
 8 Q Good morning, Helen. My name is Jonathan Cohen.
 9 I represent the plaintiff in this case Fred F. Fagal,
 10 Jr. Do you understand that you are under the same oath
 11 today as if you were in a courtroom?
 12 A That is correct.
 13 Q And the way this -- have you ever had a
 14 deposition?
 15 A I have not.
 16 Q Okay. The way this works I just ask you
 17 questions and you try to answer them.
 18 A Okay.
 19 Q If you don't understand the question, please
 20 just let me know and I'll rephrase it. If you need to
 21 take a break, that's fine just not in the middle of the
 22 question.
 23 A Right.
 24 Q Is there anything that would prevent you from

Page 3

Page 5

1 I-N-D-E-X P-A-G-E	PAGE
2 DEPOSITION EXHIBIT MARKED	
Bittel 1 - February 8, 2012 letter	10
Bittel 2 - Response to charges	11
Bittel 3 - Draft of minutes	12
Bittel 4 - January 23, 2012 document	16
Bittel 5 - Progressive Discipline	17
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14 EXAMINATION BY	PAGE
15 Helen Bittel, Ph.D.	
By Mr. Cohen	4-72

1 thinking clearly and testifying truthfully today?
 2 A No.
 3 Q Can you tell me a little bit about your
 4 educational background before Marywood?
 5 A Sure. Just prior to Marywood I was a visiting
 6 assistant professor in Oswego State, which is part of
 7 the SUNY system. I did my Ph.D. at the University of
 8 Rochester and I also taught as part-time -- as graduate
 9 assistant or graduate instructor and also as a -- later
 10 as an adjunct at the University of Rochester, the
 11 Eastman School of Music and SUNY Brockport. Before
 12 that I was at Rutgers, I did a B.A. in English.
 13 Q Okay. Currently you're employed by Marywood
 14 University?
 15 A I am.
 16 Q For how long?
 17 A I started working there in the fall semester
 18 2002, so 14 years and change. This is my 15th year.
 19 Q Okay. And when you came to Marywood, what was
 20 your first title?
 21 A My first title was assistant professor of
 22 English.
 23 Q And now you're a full professor?
 24 A No, I'm not a full professor. I'm an associate

1 professor.

2 Q Are you tenured?

3 A I am tenured.

4 Q Okay. Have you ever met my client Professor
5 Fagal before?

6 A Yes, I have.

7 Q And when did you first meet him?

8 A Sometime in my early years at Marywood, no
9 particular date comes to mind. We worked in the same
10 building, so we go downstairs to get a cup of coffee.

11 Q At some point in 2012 you participated in a
12 committee regarding certain disciplinary measures that
13 the administration was trying to bring against my
14 client, correct?

15 A Correct.

16 Q And before that --

17 A Okay.

18 Q -- what were your general impressions of
19 Professor Fagal?

20 MS. PEET: Objection to the form. You can
21 answer.

22 BY MR. COHEN:

23 Q So unless your attorney objects and instructs
24 you not to answer, you have to try to answer, but --

1 discussions you and I had --

2 THE WITNESS: Right.

3 MS. PEET: -- at any point.

4 THE WITNESS: That's our privilege.

5 MS. PEET: That would be specific to the
6 attorney/client privilege, that's correct.

7 BY MR. COHEN:

8 Q Do you remember what documents you did review in
9 preparation for this?

10 A E-mail exchanges between members of my
11 committee, drafts of the statement we ultimately
12 prepared, other general e-mails we presented along the
13 way including Doctor Fagal's statement and request for
14 appeal. We did receive the findings of the Faculty
15 Grievance Committee who adjudicated the procedural
16 aspects.

17 Q So eventually in 2012 you did serve on what's
18 called an Ad Hoc Faculty Committee?

19 A That is correct.

20 Q What was, in your own words, what was the
21 purpose of that committee?

22 A We were convened following the meeting --
23 following the meeting of the Faculty Grievance
24 Committee. The Faculty Grievance Committee functions

1 and also after I ask a question, you might want to give
2 your attorney like a few seconds so that she can
3 interpose an objection.

4 MS. PEET: Thanks, Mr. Cohen.

5 MR. COHEN: I'm sorry. It's useful advice,
6 right?

7 MS. PEET: Yeah.

8 BY MR. COHEN:

9 Q Do you need me to rephrase the question?

10 A I had no strong opinions either way.

11 Q Okay.

12 A Someone I would see in the building and see at
13 general faculty meetings.

14 Q Okay. Did you prepare at all for today's
15 deposition?

16 A For today's deposition, yes. I met with
17 Stephanie this summer.

18 Q Okay.

19 A And I reviewed documents relative to my part and
20 my role in this process.

21 Q When was --

22 MS. PEET: I'm just going to instruct you,
23 and I know Mr. Cohen didn't ask you any questions about
24 it, but you are not to discuss any substantive

1 as a grand jury and decides whether a grievance --
2 whether procedure has been followed and whether the
3 grievant should go forward. If the person appeals,
4 then the head of faculty senate calls a committee from
5 a pool of I think it's 15 tenured faculty members and
6 we are appointed to adjudicate the substance of the
7 case.

8 In this case responding to -- I guess we all
9 obviously saw, you know, as part of our review process
10 Sister Anne's documents to -- Fred Fagal's appeal to
11 Anne Munley, Anne Munley's written responses, all of
12 the back and forth.

13 Q Okay.

14 A But we -- bottom line we were supposed to
15 adjudicate the substance of Fred's grievance.

16 Q And you were supposed to adjudicate the
17 substance of his grievance or the administration's
18 requested of discipline of him?

19 A Of his appeal which was -- his appeal which was
20 his response, his grievance against Sister Anne's
21 statement of charges.

22 Q Okay.

23 A So we had to look at Sister Anne's statement of
24 charges and also why Fred said that those were not

<p style="text-align: right;">Page 10</p> <p>1 valid.</p> <p>2 Q Okay. And --</p> <p>3 A We had to ultimately decide and we saw in our</p> <p>4 final document was based on the same format that Sister</p> <p>5 Anne used, which was the same format that he followed a</p> <p>6 list of charges and whether we believed they were</p> <p>7 justified or not.</p> <p>8 Q And did you view your role, the committee's role</p> <p>9 as deciding on the appropriateness of Professor Fagal's</p> <p>10 suspension?</p> <p>11 A Yes, we did.</p> <p>12 Q As well as his termination?</p> <p>13 A As well as his termination, correct. And as</p> <p>14 well as his revocation of tenure, we also talked a</p> <p>15 great deal about that.</p> <p>16 Q And there were two other individuals on the</p> <p>17 committee, Matt Povse and --</p> <p>18 A Ed O'Brien.</p> <p>19 Q -- Ed O'Brien. I'm going to show you a</p> <p>20 document, let's have this marked as Bittel 1 please.</p> <p>21 (Whereupon Bittel Exhibit 1 was marked for</p> <p>22 identification.)</p> <p>23 BY MR. COHEN:</p> <p>24 Q And do you recognize this document? You can</p>	<p style="text-align: right;">Page 12</p> <p>1 BY MR. COHEN:</p> <p>2 Q And can you take a few moments and review this</p> <p>3 and let me know if you recognize it.</p> <p>4 A I do recognize these.</p> <p>5 Q And what is the document that you're looking at?</p> <p>6 A This is Fred Fagal's response to Anne Munley's</p> <p>7 letter detailing charges against him.</p> <p>8 Q And this isn't the first time you're seeing</p> <p>9 this?</p> <p>10 A No. This was forwarded, this was one of the</p> <p>11 documents that our committee did consider.</p> <p>12 Q Okay. That was my question.</p> <p>13 MR. COHEN: Can we have this marked as</p> <p>14 Bittel 3 please.</p> <p>15 (Whereupon Bittel Exhibit 3 was marked for</p> <p>16 identification.)</p> <p>17 BY MR. COHEN:</p> <p>18 Q Can you take a few moments and let me know if</p> <p>19 you recognize this.</p> <p>20 A This is a draft of minutes of our first full</p> <p>21 committee meeting.</p> <p>22 Q Okay. And the comments on the right side of the</p> <p>23 paper, do you know whose comments they are, the ones</p> <p>24 that are like in little boxes?</p>
<p style="text-align: right;">Page 11</p> <p>1 take a few moments.</p> <p>2 A Yes, I do recognize this.</p> <p>3 Q And what is that?</p> <p>4 A This is the letter that Sister Anne sent to Fred</p> <p>5 Fagal to detail her reasons for his termination.</p> <p>6 Q And did you consider that letter during your</p> <p>7 committee deliberations?</p> <p>8 A We did because this is the -- we answered, we</p> <p>9 evaluated each of these charges and found in favor of</p> <p>10 Sister Anne on some of them but not on all of them.</p> <p>11 Q Okay. There weren't any other charges that you</p> <p>12 decided on? It was just the ones in that letter,</p> <p>13 correct?</p> <p>14 A We did that, we did that.</p> <p>15 MS. PEET: Don't talk out loud.</p> <p>16 THE WITNESS: I believe there may have been</p> <p>17 something else considered in part one beyond breach of</p> <p>18 tenure. No, part one was about revocation of tenure,</p> <p>19 so that would be correct.</p> <p>20 MR. COHEN: Can we mark this as Bittel 2</p> <p>21 please.</p> <p>22 (Whereupon Bittel Exhibit 2 was marked for</p> <p>23 identification.)</p> <p>24 - - -</p>	<p style="text-align: right;">Page 13</p> <p>1 A Yes. My -- I don't remember for certain, but my</p> <p>2 guess is Ed O'Brien because it looks like his writing</p> <p>3 style.</p> <p>4 Q In the first paragraph the last line, correct me</p> <p>5 if I'm wrong, says -- the last two lines, Helen knows</p> <p>6 F.F. casually from working in the same building. Some</p> <p>7 of her conversations with him have been strange, but</p> <p>8 their relationship has been collegial. Matt has had</p> <p>9 very little contact with Fred at all. Did I read that</p> <p>10 correctly?</p> <p>11 A You did read that correctly, yes.</p> <p>12 Q Is that true that you told the committee that</p> <p>13 some of your conversations with Professor Fagal had</p> <p>14 been strange?</p> <p>15 A Strange in the sense of eccentric.</p> <p>16 Q Okay. And what do you mean by eccentric?</p> <p>17 A A conversation that I had in mind was a</p> <p>18 conversation we were going out with a couple -- my</p> <p>19 friends and I were going downstairs to get lunch and we</p> <p>20 ran into Fred and he referred to us as a coven.</p> <p>21 Q As a coven?</p> <p>22 A Yeah. It was just eccentric. It was an</p> <p>23 eccentric thing to say, and that's what was meant by</p> <p>24 that.</p>

<p style="text-align: right;">Page 14</p> <p>1 Q If you go down to the bottom of the first page 2 it says 5/3 AHC meets with HR and Sister Gail, do you 3 see that?</p> <p>4 A Yes, I do.</p> <p>5 Q AHC stands for Ad Hoc Committee?</p> <p>6 A Correct.</p> <p>7 Q And obviously HR stands for human resources?</p> <p>8 A Yes.</p> <p>9 Q And were you part of this meeting?</p> <p>10 A I was part of this meeting, the three of us and 11 Pat Dunleavy and Sister Gail.</p> <p>12 Q And that's Sister Gail Cabral?</p> <p>13 A Correct.</p> <p>14 Q What was discussed at that meeting?</p> <p>15 A Why they had summoned the committee and what we 16 would be charged with doing and here's the documents 17 that you need.</p> <p>18 Q And you said that Patricia Dunleavy was there?</p> <p>19 A I believe so.</p> <p>20 Q Did you ask Doctor Dunleavy whether there would 21 be two committees, one to review Professor Fagal's 22 suspension and one for termination?</p> <p>23 A I don't recall asking that.</p> <p>24 Q Do you remember her saying anything about that?</p>	<p style="text-align: right;">Page 16</p> <p>1 MS. PEET: Objection to the form. You can 2 answer.</p> <p>3 BY MR. COHEN:</p> <p>4 Q Any omission whatsoever?</p> <p>5 A I don't recognize any. It was a long time ago.</p> <p>6 Q Right.</p> <p>7 MR. COHEN: Can we make this Bittel 4 8 please.</p> <p>9 (Whereupon Bittel Exhibit 4 was marked for 10 identification.)</p> <p>11 BY MR. COHEN:</p> <p>12 Q Ma'am, can you read this to yourself and let me 13 know if you recognize it please.</p> <p>14 A I think I recognize it, I'm not positive. We 15 reviewed a lot of documents.</p> <p>16 Q There's another side to it.</p> <p>17 A Oh, there is another side. I don't remember 18 whether I saw this document or not. The events 19 described are familiar. I can't say for sure, I may 20 have seen the actual document but I can't say for sure 21 either way.</p> <p>22 Q You mean you may have considered it as part of 23 your deliberations?</p> <p>24 A Correct.</p>
<p style="text-align: right;">Page 15</p> <p>1 A I don't recall.</p> <p>2 Q Do you remember anyone at the meeting saying 3 anything about that?</p> <p>4 A I don't.</p> <p>5 Q Okay. And would you say having reviewed this 6 document this is an accurate representation of what 7 occurred at Ad Hoc Committee meeting one on May 11, 8 2012?</p> <p>9 A We decided -- the full disclosure was to make 10 sure also that none of us had anything that would -- 11 any cause to recuse ourselves and we found out no one 12 did. We selected a chair. We constructed a timeline 13 based on the documents we had received to make 14 everything easier to understand. And then we 15 considered the three issues on the back page as things 16 that we would need to investigate or consider before we 17 started to discuss the charges proper.</p> <p>18 Q So what's in this document, would you say that's 19 an accurate representation of what you guys did in the 20 first meeting?</p> <p>21 A To the best of my recollection, yes, but it was 22 four-and-a-half years ago.</p> <p>23 Q Right. Do you remember anything, any 24 significant omissions that should be here that aren't?</p>	<p style="text-align: right;">Page 17</p> <p>1 Q Do you know one way or another whether you 2 reviewed this document for preparing for today?</p> <p>3 A I don't know one way or another.</p> <p>4 MR. COHEN: Okay. Can we have this marked 5 as Bittel 5 please.</p> <p>6 (Whereupon Bittel Exhibit 5 was marked for 7 identification.)</p> <p>8 BY MR. COHEN:</p> <p>9 Q And do you recognize this document?</p> <p>10 A This, I do. Yes, I do recognize this document.</p> <p>11 Q Did you consider this during your committee 12 deliberations?</p> <p>13 A Definitely. This was one of the first documents 14 we were given.</p> <p>15 Q Okay.</p> <p>16 A And we looked very carefully at the language of 17 this document.</p> <p>18 MR. COHEN: Let's mark this as Bittel 6 19 please.</p> <p>20 (Whereupon Bittel Exhibit 6 was marked for 21 identification.)</p> <p>22 BY MR. COHEN:</p> <p>23 Q Can you read this to yourself and let me know 24 when you're finished please.</p>

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<p>1 A I'm done.</p> <p>2 Q Okay. So the first part of this e-mail is from</p> <p>3 you to Doctor Erin A. Sadlack dated May 17, 2012;</p> <p>4 right?</p> <p>5 A That's correct.</p> <p>6 Q And this was later forwarded on to Patricia</p> <p>7 Dunleavy, right?</p> <p>8 A Correct.</p> <p>9 Q Now, your message to Doctor Sadlack you</p> <p>10 mentioned here that discussing the -- talking with</p> <p>11 Doctor Sadlack and her committee, you expressed some</p> <p>12 concern about whether that would compromise the</p> <p>13 independence of your investigation; correct?</p> <p>14 A Correct.</p> <p>15 Q Why would potentially talking with Erin Sadlack</p> <p>16 compromise the independence of your investigation?</p> <p>17 A We didn't want to know the reasons behind their</p> <p>18 findings because we wanted to be able to know that our</p> <p>19 own findings came from our own deliberations.</p> <p>20 Q Okay.</p> <p>21 A Findings as to the -- related to the substance</p> <p>22 of the case.</p> <p>23 Q And in general you thought that was important</p> <p>24 that your Ad Hoc Committee conduct an independent</p>	<p>1 e-mail, you had already conducted your first Ad Hoc</p> <p>2 Committee meeting; right?</p> <p>3 A Yes, correct.</p> <p>4 Q And so did you know at this point that Mr.</p> <p>5 Anthony and I had been exchanging letters about</p> <p>6 disciplinary process?</p> <p>7 A I'm pulling up document 3 here, we did have a</p> <p>8 timeline. So we were aware on the 11th that you sent a</p> <p>9 letter to Sister Anne Munley challenging the charges</p> <p>10 and we were also aware that on February 9th Anthony</p> <p>11 sent a letter to you; we specify not included in our</p> <p>12 packet by mentioned by Fred Fagal in his grievance.</p> <p>13 Q Mr. Anthony's letter wasn't -- you don't have</p> <p>14 that?</p> <p>15 A I don't think so. We just know that there was</p> <p>16 one because he referenced it in his grievance.</p> <p>17 Q Okay. Were you aware that Mr. Anthony and I</p> <p>18 were having a dispute about the appropriateness of</p> <p>19 Professor Fagal's discipline and the procedure</p> <p>20 regarding it?</p> <p>21 MS. PEET: Objection to the form.</p> <p>22 THE WITNESS: Yes.</p> <p>23 BY MR. COHEN:</p> <p>24 Q Did it ever occur to you that discussing any</p>
Page 19	Page 21
<p>1 investigation?</p> <p>2 A Correct.</p> <p>3 Q Later in the e-mail you mention that you have a</p> <p>4 call in to the attorney to get a little more detail</p> <p>5 from him. Again I'm not going to ask you what you</p> <p>6 discussed, but you're referring to Marywood's attorney?</p> <p>7 A Correct.</p> <p>8 Q Will Anthony?</p> <p>9 A That is correct.</p> <p>10 Q What did you view his role as?</p> <p>11 A Our understanding is that we could contact him</p> <p>12 if we had questions or concerns about the process.</p> <p>13 Q Who did you think that Mr. Anthony represented?</p> <p>14 A That he --</p> <p>15 MS. PEET: Objection to form, lack of</p> <p>16 foundation.</p> <p>17 BY MR. COHEN:</p> <p>18 Q Did you think that Mr. Anthony represented</p> <p>19 anyone in particular?</p> <p>20 A Not an individual, no.</p> <p>21 Q You don't think he had any client?</p> <p>22 A Marywood University as a corporate university,</p> <p>23 but not Sister Anne Munley or any one individual.</p> <p>24 Q Okay. As of the date that you were writing this</p>	<p>1 part of your deliberations with Mr. Anthony might</p> <p>2 compromise the independence of your investigation?</p> <p>3 MS. PEET: Objection to the form. You can</p> <p>4 answer.</p> <p>5 THE WITNESS: At that stage we were not</p> <p>6 seeking any clarification on the substance of the case.</p> <p>7 MS. PEET: I just want to instruct you not</p> <p>8 to disclose any communications that you have had either</p> <p>9 with myself, with Mr. Anthony, with any other counsel</p> <p>10 for Marywood, for Doctor Fagal, for Sister Munley</p> <p>11 pursuant to attorney/client privilege.</p> <p>12 BY MR. COHEN:</p> <p>13 Q Also I don't want to know anything Mary Theresa</p> <p>14 Patterson said or might not have had said to you. I</p> <p>15 just want to know if the thought had ever crossed your</p> <p>16 mind that talking with Mr. Anthony could compromise the</p> <p>17 independence of the Ad Hoc Faculty Committee's</p> <p>18 investigation?</p> <p>19 A No, because --</p> <p>20 Q I don't want to know what anyone said to you,</p> <p>21 any attorney. But you were about to say because;</p> <p>22 unless the answer was someone told you, some attorney</p> <p>23 told you that it wouldn't then I don't want to know.</p> <p>24 A That was not.</p>

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<p>1 Q So what were you going to say? 2 A I was going to say because our question was 3 procedural, we were not calling him about a substantive 4 aspect of the case.</p> <p>5 MS. PEET: I don't want you to talk about 6 anything else.</p> <p>7 MR. COHEN: Can we have this marked as 8 Bittel 7 please.</p> <p>9 (Whereupon Bittel Exhibit 7 was marked for 10 identification.)</p> <p>11 BY MR. COHEN:</p> <p>12 Q Could you read this to yourself and let me know 13 when you're finished.</p> <p>14 A All right.</p> <p>15 Q Do you recognize this?</p> <p>16 A I do recognize it.</p> <p>17 Q And what is it?</p> <p>18 A It is the minutes from our second meeting.</p> <p>19 Q And did you generate this, these minutes or did 20 another committee member do that?</p> <p>21 A I believe that I generated them.</p> <p>22 Q Okay. During your actual -- during your 23 meetings, your Ad Hoc Committee meetings, were you 24 taking contemporaneous written notes or did you later</p>	<p>1 Q So you don't feel the need to upgrade your iPad 2 every year like Apple wants you to?</p> <p>3 A No. This is a five-year-old iPad with a crack 4 across the screen. Nobody is going to steal it.</p> <p>5 Q After having read these minutes, do they 6 accurately reflect what occurred during the second Ad 7 Hoc Committee meeting on May 17, 2012 to the best of 8 your memory?</p> <p>9 A They reflect what we understood at that moment, 10 at the moment of that meeting. But as all of our 11 minutes indicate, this is a new process that had never 12 been, to our knowledge, been used at Marywood before 13 and there were some anomalies in that we did not have 14 authorization to go to Ad Hoc Committee between 15 suspension and termination.</p> <p>16 So the bottom line there is that we were coming 17 to understand the process as we -- as it evolved. But 18 this is what we understood that day, although later we 19 did in our actual deliberations we did consider three 20 things. We considered suspension, we considered 21 termination and we considered revocation of tenure.</p> <p>22 Q Okay. So there's a lot to unpack from all of 23 that. You understood that the process that the 24 committee was engaged in was the first time that the</p>
<p>1 just type this out from memory?</p> <p>2 A No, I took minutes on my iPad.</p> <p>3 Q Okay. Do you know whether --</p> <p>4 MR. COHEN: Could we just go off the record 5 for a second.</p> <p>6 (Whereupon an off-the-record discussion 7 took place.)</p> <p>8 BY MR. COHEN:</p> <p>9 Q These notes that you took on your iPad, do they 10 exist any longer?</p> <p>11 A Probably. I think that I sent them to Pat 12 Dunleavy at some point at that January 2015 when we had 13 a meeting and they let us know that this might be going 14 to a deposition.</p> <p>15 Q Okay.</p> <p>16 A I don't remember for sure.</p> <p>17 Q Okay.</p> <p>18 MS. PEET: For what it's worth, I will 19 check.</p> <p>20 MR. COHEN: Thank you.</p> <p>21 BY MR. COHEN:</p> <p>22 Q Do you still have the iPad that you took the 23 notes on?</p> <p>24 A Yes.</p>	<p>1 progressive discipline policy had ever been used at 2 Marywood?</p> <p>3 A No, I didn't --</p> <p>4 MS. PEET: Objection, mischaracterization 5 of testimony. You can answer.</p> <p>6 BY MR. COHEN:</p> <p>7 Q What was it that --</p> <p>8 A None of us had any --- the three of us on the 9 committee who had been there a long time had no memory 10 of such a committee being convened.</p> <p>11 Q Ever?</p> <p>12 A We wouldn't know if one ever was because other 13 people in the university don't know that this is 14 happening. We didn't have -- faculty said Executive 15 Committee was not able to say, oh, yeah, this has 16 happened before and this is what was done.</p> <p>17 Q And you mentioned that -- you mentioned the word 18 anomalies in the process. What did you mean by that?</p> <p>19 A That we would have expected to have been 20 convened following suspension, but that because Fred 21 didn't sign off on the authorization to convene the 22 committee that we were not convened until later.</p> <p>23 Q Were you aware that Fred through his attorney, 24 me, had requested that a committee review his</p>

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<p>1 suspension?</p> <p>2 MS. PEET: Objection; lack of foundation,</p> <p>3 mischaracterization of evidence. You can go ahead and</p> <p>4 answer if you know.</p> <p>5 THE WITNESS: By this point.</p> <p>6 MS. PEET: You don't need to look at</p> <p>7 anything, he's asking you if you know.</p> <p>8 THE WITNESS: I don't remember. We know</p> <p>9 that Sister Anne Munley had received papers from you.</p> <p>10 BY MR. COHEN:</p> <p>11 Q When you were using your iPad to take notes at</p> <p>12 this committee meeting, what program on your iPad were</p> <p>13 you using?</p> <p>14 A Notability.</p> <p>15 MS. PEET: Can we go off the record for a</p> <p>16 second.</p> <p>17 MR. COHEN: Sure.</p> <p>18 (Whereupon an off-the-record discussion</p> <p>19 took place.)</p> <p>20 BY MR. COHEN:</p> <p>21 Q On the first page of these minutes towards the</p> <p>22 bottom, do you see where it says first page?</p> <p>23 A First page towards the bottom.</p> <p>24 Q Do you see where it says after Erin left we</p>	<p>1 Q Why did you want to know whether Professor Fagal</p> <p>2 rejected or refused remediation?</p> <p>3 A Because he was claiming in his documents that he</p> <p>4 should have had the opportunity for remediation.</p> <p>5 Q And did you think that -- scratch that. Two</p> <p>6 points down then you ask does the video, in</p> <p>7 parentheses, understood as an escalation of</p> <p>8 inappropriate behavior represent a failure of the</p> <p>9 discipline system at Marywood; correct?</p> <p>10 A Yes.</p> <p>11 Q What did you mean by that question?</p> <p>12 A Part of what was happening there is that</p> <p>13 someone, I think that may have been Ed's point, was</p> <p>14 that we wanted to make sure that we were considering</p> <p>15 all angles; that we were -- that we were considering</p> <p>16 the ways that Sister Anne might be correct or incorrect</p> <p>17 in her charges and the way that Fred may have been</p> <p>18 correct or incorrect in his charges. We wanted to make</p> <p>19 sure that we were judicious and that we did our due</p> <p>20 diligence in weighing both sides fairly. And so this</p> <p>21 was on the table as -- just on the table as a question</p> <p>22 to be assessed.</p> <p>23 Q Right. But why would the video potentially</p> <p>24 represent a failure of progressive discipline at</p>
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<p>1 concluded?</p> <p>2 A Mm-mm.</p> <p>3 Q We concluded that we, the AHC, are in charge of</p> <p>4 reviewing the substance of the termination charge, in</p> <p>5 parentheses, dismissal and revocation of tenure. Did I</p> <p>6 read that correctly?</p> <p>7 MS. PEET: There's no question. Did he</p> <p>8 read it correctly?</p> <p>9 THE WITNESS: Yes.</p> <p>10 BY MR. COHEN:</p> <p>11 Q So is it true that you didn't view the role of</p> <p>12 the committee as reviewing any of the procedural</p> <p>13 aspects of the recommended discipline against Fred?</p> <p>14 A Our understanding at this moment in time was</p> <p>15 that the procedural aspects had already been decided by</p> <p>16 the FGC and could not themselves be appealed, that</p> <p>17 their decision was final.</p> <p>18 Q Let's turn to the next page. You wrote some of</p> <p>19 the questions we will consider going forward include</p> <p>20 and the second point says did F.F. in essence reject or</p> <p>21 refuse remediation especially in his meeting with</p> <p>22 S.A.M. on January 23rd when he refused to discuss the</p> <p>23 video, correct?</p> <p>24 A Yes.</p>	<p>1 Marywood?</p> <p>2 MS. PEET: Objection to the form. You can</p> <p>3 answer.</p> <p>4 THE WITNESS: This was a very -- I mean</p> <p>5 this was a very hard question to answer because you</p> <p>6 would only see it as a failure of progressive</p> <p>7 discipline if there had been a record of progressive</p> <p>8 discipline, and that was not information that we were</p> <p>9 given at this moment. So we couldn't know either way,</p> <p>10 right, we couldn't know had there been previous</p> <p>11 progressive discipline and it failed or had there not</p> <p>12 been. We just didn't know at that point.</p> <p>13 BY MR. COHEN:</p> <p>14 Q Later on did you later learn whether there had</p> <p>15 been a history of progressive discipline against Fred?</p> <p>16 A I know we inquired about it, inquired about</p> <p>17 whether we could have access to personnel records. I</p> <p>18 believe, if I'm remembering correctly, that Fred signed</p> <p>19 off on it and we were given some information about</p> <p>20 things that had happened previously concerning a</p> <p>21 cartoon but that did not result in formal discipline.</p> <p>22 Q And if we keep going down the page under the</p> <p>23 heading actions, the first point says Helen will e-mail</p> <p>24 P.D. and let her know that we understand our charge to</p>

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<p>1 be the review of substance, the termination and denial 2 of tenure charges. We understand that the issues of 3 suspension and procedure were resolved by the FGC. Did 4 I read that correctly?</p> <p>5 A You did read it correctly.</p> <p>6 Q And P.D. stands for Patricia Dunleavy, right?</p> <p>7 A That's correct.</p> <p>8 Q And FGC stands for Faculty Grievance Committee, 9 right?</p> <p>10 A Correct.</p> <p>11 Q Now, earlier today I think you said that your 12 committee, one of the purposes was to consider 13 Professor Fagal's suspension; correct?</p> <p>14 A We later came to consider that in our 15 deliberations, but at this moment in the process of 16 figuring out who does what and what our role was in the 17 judicial process at this moment we were less sure.</p> <p>18 Q So what made you sure later that you were 19 supposed to consider the suspension?</p> <p>20 A We just -- because the same action precipitated 21 the suspension and the dismissal. And so we did not 22 prepare a separate statement on the suspension because 23 if you found -- since our findings upheld a greater 24 charge on the same action, it doesn't make any sense</p>	<p>1 revocation of tenure, which in some ways is the more 2 serious issue were found to be justified.</p> <p>3 MR. COHEN: Okay. Can we have this marked 4 as Bittel 8 please.</p> <p>5 (Whereupon Bittel Exhibit 8 was marked for 6 identification.)</p> <p>7 BY MR. COHEN:</p> <p>8 Q And could you read this to yourself and let me 9 know when you're finished please.</p> <p>10 A Okay.</p> <p>11 Q Do you recognize this?</p> <p>12 A It appears to -- I vaguely recognize it. It 13 looks like my writing.</p> <p>14 Q Are these notes that you took about a telephone 15 conversation that you had with Pat Dunleavy?</p> <p>16 A Yes.</p> <p>17 MS. PEET: And for the record, can we 18 describe the blackouts so she understands.</p> <p>19 BY MR. COHEN:</p> <p>20 Q Yes. The blackouts no one is saying that you 21 did that. Marywood's attorneys have to redact certain 22 things --</p> <p>23 A Okay.</p> <p>24 Q -- because they may be privileged.</p>
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<p>1 that they wouldn't uphold a lesser charge on the same 2 action.</p> <p>3 Q So did you consider that -- did you think that 4 reviewing the suspension; if you had already determined 5 that Professor Fagal's termination was appropriate, did 6 that lead you to think that you did not need to 7 consider whether the suspension was appropriate?</p> <p>8 MS. PEET: Objection to the form.</p> <p>9 THE WITNESS: We discussed the suspension, 10 but we did not prepare a formal -- we did not prepare a 11 statement on it because if termination is justified, 12 why wouldn't a suspension be justified unless there 13 were a procedural problem and the FGC had already 14 adjudicated that there was not a procedural issue.</p> <p>15 BY MR. COHEN:</p> <p>16 Q So why would you discuss the suspension at all 17 if you thought that the termination was appropriate?</p> <p>18 A Because it was on the table. I mean we did have 19 to ask ourselves first could suspension be justified by 20 the actions and then could termination and revocation 21 of tenure be justified by the actions.</p> <p>22 Q But you didn't make any formal finding about 23 whether the suspension was appropriate?</p> <p>24 A No, because termination and especially</p>	<p>1 A Okay.</p> <p>2 Q So ignore that please.</p> <p>3 A Okay.</p> <p>4 Q So based on these notes, Doctor Dunleavy told 5 you that your committee needed to provide an 6 independent review?</p> <p>7 A Yes, that word was used several times.</p> <p>8 Q And that your committee needed to come to a 9 decision independently from the administration?</p> <p>10 A That was made very clear to us from the first 11 meeting. The first time we met with Sister Gail and 12 Pat Dunleavy, we were told that there's no punitive 13 action against you if you find against the 14 administration. There's no -- you know, that you need 15 to be an independent review or an independent review of 16 the substance of the charges.</p> <p>17 Q Point five here you're taking notes on advice 18 that Doctor Dunleavy gave you about when the 19 progressive discipline policy applies and when it 20 doesn't apply, right?</p> <p>21 A Correct.</p> <p>22 Q So you understood that there are some cases in 23 which the progressive discipline policy does not apply?</p> <p>24 A Yes. And we came to the conclusion prior to</p>

1 this conversation with Pat that we wanted to verify
 2 with her as well. This was a conclusion that we came
 3 to based on our reading of the progressive discipline
 4 policy that she gave me previously.

5 Q How did you come to the conclusion that the
 6 progressive discipline policy sometimes doesn't apply?

7 A The word may, it's a verb.

8 MS. PEET: Do you need to look at
 9 something?

10 THE WITNESS: Should I look in the --

11 BY MR. COHEN:

12 Q I'm not asking you to look at the exhibit yet.

13 A Okay. It was the wording and the language of
 14 the policy particularly, the verbs like may and might
 15 as opposed to will or should.

16 Q Let's turn back to Bittel 5. This is the
 17 progressive discipline policy, right?

18 A Yes, it is.

19 Q Now, can you tell me again how you came to the
 20 conclusion that in some cases this policy does not
 21 apply?

22 MS. PEET: Just for clarification, that the
 23 policy didn't apply generally or the policy doesn't
 24 apply in this situation?

1 BY MR. COHEN:

2 Q In this situation.

3 A Because paragraph one; one, two, three, four
 4 lines down; because the university regards disciplinary
 5 action as corrective and not punitive, the policy
 6 recognizes personal and professional problems that may
 7 be rectified by an informal educational process as well
 8 as serious violations and professional responsibility
 9 is implicating possible recommendations for suspension
 10 or dismissal.

11 Q And the word may is what --

12 A Yes.

13 Q -- led you to believe that in this case
 14 progressive discipline wasn't appropriate?

15 A Right.

16 Q Anything else in the policy that led you to that
 17 conclusion?

18 A On top of page two special assistance; in those
 19 circumstances where it is evident that the faculty
 20 member is in need of special professional assistance,
 21 the vice president for academic affairs may require any
 22 one of these remedial actions. Where it is evident
 23 that the faculty member is in need of special
 24 professional assistance, we did not think it was

1 evident in this case.

2 Similarly in the first paragraph of the policy
 3 statement may be rectified by an informal education
 4 process, we did not see this as a -- we considered
 5 whether this was a situation where an educational
 6 process, an informal education process -- whether
 7 personal and professional problems that may be
 8 rectified by an informal educational process applied to
 9 this case, and we determined that it did not apply to
 10 this case.

11 Q So if the progressive discipline policy didn't
 12 apply to this case, what written rules were you
 13 supposed to follow, if any?

14 A Well, we looked here the justification for
 15 suspension; the faculty member may be suspended by the
 16 VPA at any time during the proceedings. Suspension is
 17 justified if immediate harm to the faculty members or
 18 others is threatened by the person's continuance in a
 19 faculty position. And we debated whether such harm was
 20 present in this situation and ultimately determined
 21 that it was.

22 Q But the suspension paragraph is part of the
 23 progressive discipline policy, right?

24 A Yes.

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1 Q Okay.
 2 A -- did not apply to these circumstances. The
 3 policy applies but the opportunity for remediation, I
 4 guess I was not clear in speaking before. The
 5 opportunity for remediation is not guaranteed by this
 6 policy.

7 Q Okay.

8 A I would also point out in the end of the policy
 9 statement it ends by saying is designed to be a series
 10 of gradual steps involved, da, da, da, where applicable
 11 and that means not every step is applicable to every
 12 case and remediation in particular is not applicable to
 13 every case.

14 Q If someone in the administration like Pat
 15 Dunleavy had told you that -- this is hypothetical --
 16 had told you that the progressive discipline policy
 17 applies in every case and that remediation applies in
 18 every case, would you have come to the conclusion that
 19 President Munley's termination of Professor Fagal was
 20 appropriate?

21 MS. PEET: Objection; calls for
 22 speculation, assumes facts not in evidence. If you can
 23 somehow answer that, you can answer.

24 THE WITNESS: That's too speculative for me

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1 Q Can we take a ten-minute break?
 2 A Sure.
 3 (Whereupon a recess took place.)
 4 (Whereupon Bittel Exhibit 10 was marked for
 5 identification.)

6 BY MR. COHEN:

7 Q Could you go through this and let me know when
 8 you're finished please.

9 A Sure. I'm done.

10 Q Okay. So first page there's an e-mail from
 11 Doctor O'Brien to you and Matt dated June 2, 2012 at
 12 9:52 a.m., do you see that?

13 A Yes.

14 Q And Doctor O'Brien in the second paragraph he
 15 say his current inclination is that it will be useful
 16 to interview Sister Anne about a few narrow questions
 17 and then he goes on to list them, right?

18 A Mm-mm.

19 MS. PEET: Is that a yes?

20 THE WITNESS: Yes, it is.

21 BY MR. COHEN:

22 Q Do you know whether the committee ever did get
 23 the opportunity to ask these questions?

24 MS. PEET: Objection to the form.

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1 to answer.

2 MR. COHEN: Okay. Can we have this marked
 3 as Bittel 9 please.

4 (Whereupon Bittel Exhibit 9 was marked for
 5 identification.)

6 BY MR. COHEN:

7 Q Can you read this to yourself and let me know
 8 when you're finished please.

9 A Yes.

10 Q This is an e-mail from you to Patricia Dunleavy
 11 dated May 18, 2012 at 4:03 p.m., right?

12 A Mm-mm.

13 MS. PEET: Is that a yes?

14 THE WITNESS: Yes, that is.

15 BY MR. COHEN:

16 Q And here again you're saying to Doctor Dunleavy
 17 we agreed that our charge should be the review of
 18 substance, the termination and denial of tenure and
 19 that you understood that the issues of suspension and
 20 procedure were resolved by the Faculty Grievance
 21 Committee; is that correct?

22 A That is what we understood at that moment. This
 23 is basically our followup to her on the May 17th
 24 meeting.

1 MR. COHEN: What is it about the question?

2 MS. PEET: Whether or not they had the
 3 opportunity.

4 BY MR. COHEN:

5 Q Let me rephrase it. Did the committee ever
 6 actually ask these questions of Sister Anne?

7 A To the best of my recollection we did meet with
 8 her, but I don't remember if these were the questions
 9 that we discussed or what the final form of the
 10 questions we discussed was.

11 Q But you do know that you met with her, but you
 12 just don't remember the exact questions?

13 A I'm fairly certain we met with her, but I don't
 14 remember for sure. If I had to guess, I would guess --

15 Q Don't guess.

16 A Okay.

17 Q In the next paragraph Doctor O'Brien says that
 18 he also thinks that we may want to interview Fred by
 19 phone, do you see that?

20 A Yeah.

21 Q And that never happened, right?

22 A I don't believe that happened.

23 Q Just take my word for it, it didn't happen. Do
 24 you know why you guys didn't interview Fred by phone?

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1 MS. PEET: Objection, it assumes facts not
2 in evidence. You can go ahead and answer.
3 THE WITNESS: Again this is four-and-a-half
4 years ago. I'm relying on, you know; a lot of time has
5 passed since then. I believe that there was an e-mail
6 exchange with Fred rather than a phone call.
7 BY MR. COHEN:
8 Q You believe there was an e-mail exchange in lieu
9 of a phone call?
10 A Yes, correct.
11 MR. COHEN: Okay. Call this Bittel 11.
12 (Whereupon Bittel Exhibit 11 was marked for
13 identification.)
14 BY MR. COHEN:
15 Q Can you read this to yourself and let me know
16 when you're finished please.
17 A I'm done.
18 Q Okay. On the second page there's an e-mail from
19 Doctor O'Brien to you and Matt Povse dated June 7, 2012
20 at 12:46 p.m., do you see that?
21 A Yes, I do.
22 Q Third paragraph down that begins I like the
23 open-ended format, do you see that?
24 A Mm-mm.

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1 Q Does this paragraph refresh your recollection
2 about whether or not Sister Anne Munley was interviewed
3 by your committee?
4 A It does refresh my recollection that we did meet
5 with her.
6 Q Okay.
7 A I don't remember offhand the substance of that
8 conversation.
9 Q Okay. On the first page there's an e-mail from
10 you to at least Doctor O'Brien dated June 11, 2012 at
11 10:57 a.m., do you see that?
12 A Yes.
13 Q And three paragraphs down it begins I definitely
14 agree?
15 A Mm-mm, I see that.
16 MS. PEET: Is that a yes?
17 THE WITNESS: Yes, I see that.
18 BY MR. COHEN:
19 Q Here you're saying that you're reluctant to ask
20 to interview Fred because you fear that that would be
21 opening the door to a gigantic rant, do you see that?
22 A Yes, I see that.
23 Q What do you mean by a gigantic rant?
24 A That I was fearful that instead of answering our

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1 question, he would just tell us what's on his mind
2 regarding the injustice of what happened with the fire
3 posters.
4 Q Why do you think he would do that?
5 A Because in what we know and the records we
6 eventually received regarding the January 23rd meeting,
7 he didn't -- he kept coming back to that when Sister
8 Anne asked him about explaining the video.
9 Q So you didn't actually think he would answer
10 your questions?
11 A Correct, that particular. I didn't think that
12 he -- I had reservations that he might not answer,
13 answer the question as asked.
14 Q What would have been the big deal, that would
15 have been if you wasted minutes, right?
16 MS. PEET: Objection to form. You can
17 answer.
18 THE WITNESS: I don't remember.
19 BY MR. COHEN:
20 Q Okay. At the bottom of that paragraph you said
21 and it would parallel the second questions we have for
22 Sister Anne, do you see that?
23 A It would parallel the second questions we had
24 for Sister Anne, on the other hand if we did have to

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1 uphold Sister Anne --
2 MS. PEET: Don't read out loud.
3 THE WITNESS: I do see that.
4 BY MR. COHEN:
5 Q What did you mean by -- did you mean the second
6 round of questions or like a second question, what did
7 you mean by that?
8 A A second question, that's a typo.
9 Q You mean a second question?
10 A Yes.
11 Q And by second question you're referring to what
12 actual question?
13 A I don't remember, presumably the questions that
14 we were planning to ask her in the meeting that are not
15 included in this e-mail.
16 Q Ask --
17 A Ask of Sister Anne.
18 Q Okay. But based on the date of the e-mail from
19 Doctor O'Brien on June 7th, is it your impression by
20 that point that you had already interviewed Sister Anne
21 or rather you were planning to?
22 A I think we had not yet interviewed her.
23 MR. COHEN: Okay. Let's mark this as
24 Bittel 12 please.

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1 (Whereupon Bittel Exhibit 12 was marked for
 2 identification.)
 3 BY MR. COHEN:
 4 Q Do you recognize this document?
 5 A It's meeting minutes, June 18th -- June 19th.
 6 Q And again you generated these minutes?
 7 A I did.
 8 Q Okay. Is there any reason to doubt the accuracy
 9 of these minutes?
 10 A Let me take a look. I would like to read it
 11 closer.
 12 Q Sure.
 13 A Okay. I'm done.
 14 Q Okay. Based on your reading, is there any
 15 reason to doubt the accuracy of these minutes?
 16 A I don't see any.
 17 Q So it's clear from these minutes that you did
 18 meet with Sister Anne on June 18th, right?
 19 A That's correct.
 20 Q And you don't remember what was discussed?
 21 A No.
 22 Q Do you remember whether President Munley ever
 23 informed you that Professor Fagal had asked for an
 24 opportunity to answer her questions in writing?

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1 A I don't recall that.
 2 Q Other than the fact that you don't recall her
 3 saying it to you, did you know if Professor Fagal had
 4 asked for an opportunity to answer President Munley's
 5 questions in writing?
 6 A I don't think so. Meaning President Munley's
 7 questions with regard to the original questions she
 8 asked on January 23th with respect to the video?
 9 Q Right.
 10 A I don't think so.
 11 Q Okay. If you had done that, would that have
 12 changed any of your conclusions about -- any of the
 13 conclusions that you made and adjudicated the
 14 discipline that was imposed on Fred?
 15 MS. PEET: Objection. She said she doesn't
 16 think so, but she doesn't know. And secondly, it calls
 17 for speculation, it assumes facts not in evidence. You
 18 can answer.
 19 THE WITNESS: I can't guess what the -- we
 20 came to our decision as a committee, not as a -- we
 21 thought about the issue individually, but we came --
 22 our decision and our deliberations were collective and
 23 I can't speculate as to what other people would say.
 24 - - -

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1 BY MR. COHEN:
 2 Q Yeah. But I asked about would it have changed
 3 your opinion.
 4 MS. PEET: Same objection.
 5 THE WITNESS: Would it have changed my mind
 6 to know that he had requested that?
 7 BY MR. COHEN:
 8 Q Yes.
 9 A And would it have changed my mind about what
 10 specifically?
 11 Q About whether remediation was appropriate.
 12 A It would not have changed my mind on the
 13 remediation question because the policy does not
 14 require remediation to be offered.
 15 Q Now, at the bottom of -- do you see the
 16 paragraph that begins we then took our first vote?
 17 A Yes.
 18 Q And the bottom of that paragraph it says he also
 19 had multiple opportunities to make amends, show remorse
 20 and explain his actions; do you see that?
 21 A Yes.
 22 Q Does that imply that you felt that he never took
 23 any of those opportunities?
 24 A That's referring to when Anne Munley asked him

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1 to explain his actions on January 23rd and he did not
 2 and did not subsequently in the period to our knowledge
 3 and did not subsequently after that explain his reasons
 4 to Anne Munley.
 5 Q Right. But I'm now bringing to your attention
 6 if he had said at that meeting with President Munley
 7 can I put my -- can I answer your questions in writing,
 8 that would sort of conflict with the view that he --
 9 A Had multiple opportunities?
 10 Q Yes.
 11 MS. PEET: Objection to form, calls for
 12 speculation. That's your opinion, doesn't necessarily
 13 means it's her opinion and it assumes that he would
 14 have put in writing that he was remorseful, which there
 15 is no evidence that he would have done such a thing.
 16 BY MR. COHEN:
 17 Q I'm looking for your answer.
 18 A You're looking for my answer.
 19 Q If he had asked for an opportunity to answer
 20 President Munley's questions in writing, that would
 21 make this statement not very accurate; right; he also
 22 had multiple opportunities to make amends, show remorse
 23 and explain his actions?
 24 MS. PEET: Objection to the form.

<p style="text-align: center;">Page 50</p> <p>1 THE WITNESS: If we knew that that was the 2 case, yes, that would make my statement there, it would 3 problematize my statement there. It may not have 4 changed the outcome.</p> <p>5 BY MR. COHEN:</p> <p>6 Q On the second page it says charge two, the 7 bottom of that paragraph it says while Fagal is correct 8 in saying that he was not getting a review in this 9 point, there might have been one if he had answered 10 Munley's questions on January 23rd. Do you see that?</p> <p>11 A Yes.</p> <p>12 Q And again that would -- if he had asked for an 13 opportunity to answer her questions in writing, that 14 would sort of conflict with the statement here; right?</p> <p>15 MS. PEET: Objecting to the form, it calls 16 for speculation. You can answer.</p> <p>17 THE WITNESS: It would object, it would -- 18 yes, it would conflict with that point, but that's not 19 the -- as with the previous case, the point that is 20 potentially invalidated is not the only point that was 21 made or the only reason on the table.</p> <p>22 BY MR. COHEN:</p> <p>23 Q On the last page under action items it says 24 Povse -- how do you pronounce his name by the way?</p>	<p style="text-align: center;">Page 52</p> <p>1 correct?</p> <p>2 A I believe that's correct.</p> <p>3 Q Why?</p> <p>4 A Because our -- Anne Munley is the person who 5 asked us keep her apprised of the timeline and she's 6 the one who said can you -- she's the one who said when 7 are you going to be finished, I need to know what the 8 date is.</p> <p>9 Q She said that?</p> <p>10 A I mean I can't say with 100 percent certainty, 11 but I know that she asked us when our expected date of 12 completion would be because she didn't want it to drag 13 out too long either. But this was in -- as far as I 14 can remember, it was in response to her inquiry about 15 when we would submit a final decision.</p> <p>16 Q How many inquiries did she make about the 17 timetable?</p> <p>18 A I don't remember, obviously at least one.</p> <p>19 Q Did she say why it was important that this not 20 drag out?</p> <p>21 A I don't remember. I mean I'm guessing that 22 there's -- you're supposed to complete --</p> <p>23 MS. PEET: Don't guess.</p> <p>24 - - -</p>
<p style="text-align: center;">Page 51</p> <p>1 A Povse.</p> <p>2 Q Povse will contact Anne Munley and apprise her 3 of her progress, is that right?</p> <p>4 A That is correct. He was not indicating --</p> <p>5 MS. PEET: There's no question on the 6 table. Let him ask.</p> <p>7 BY MR. COHEN:</p> <p>8 Q Why did -- why was it important that Povse keep 9 President Munley apprised of the progress of the 10 committee?</p> <p>11 MS. PEET: Objection to the form.</p> <p>12 THE WITNESS: By progress he meant 13 timeline. This was -- these deliberations largely 14 occurred over the summer when we were all off contract 15 and had various travel plans. So it took a lot longer 16 to get through it than we had expected because one of 17 us would be away and then the other would be away. And 18 there's three people, you know, who did not plan their 19 summer expecting this. So he was apprising her of -- 20 by progress he means of our timeline and we are at the 21 stage of drafting a decision.</p> <p>22 BY MR. COHEN:</p> <p>23 Q But nobody wanted to keep Professor Fagal 24 informed of the progress of the committee, is that</p>	<p style="text-align: center;">Page 53</p> <p>1 BY MR. COHEN:</p> <p>2 Q She didn't say?</p> <p>3 A I don't remember her saying.</p> <p>4 Q Okay. Did you in any way feel time pressured?</p> <p>5 A No.</p> <p>6 Q Did you in any way feel that she was pressuring 7 you to rule in her way?</p> <p>8 A Not at all. And again we were assured by Pat 9 Dunleavy and -- we were assured by Pat Dunleavy on the 10 first day that nobody in the administration can take 11 any action against you if your decision disagrees with 12 theirs. We were promised that protection.</p> <p>13 Q The last paragraph says after we workshop our 14 draft, we will send it to Will Anthony for comment, is 15 he an independent voice or does he work for 16 Munley/Marywood?</p> <p>17 A Yes.</p> <p>18 Q Did you ever get an answer to your question is 19 he an independent voice?</p> <p>20 A I don't recall.</p> <p>21 Q Well, why did you think that he might work for 22 Munley/Marywood?</p> <p>23 MS. PEET: Objection to the form, assumes 24 facts not in evidence.</p>

1 THE WITNESS: Because Marywood is paying
2 for him.

3 MR. COHEN: Okay. May I have this marked
4 as Bittel 13 please.

5 (Whereupon Bittel Exhibit 13 was marked for
6 identification.)

7 BY MR. COHEN:

8 Q Could you read this to yourself and let me know
9 when you're finished, just the e-mail not the
10 attachment.

11 A So not the attachment?

12 Q Right.

13 A Yes, I read it.

14 Q Okay. Now, this is an e-mail from you to
15 Matthew Povse and Doctor O'Brien?

16 A Yes.

17 Q Dated June 26, 2012 at 12:24 p.m.?

18 A Correct.

19 Q Other than this block redaction, do you remember
20 writing this?

21 A It's my e-mail account, it's my signature.

22 Q I'm trying to get you to authenticate it. This
23 is in fact an e-mail that you sent?

24 A This is an e-mail that I sent, yes.

1 a -- his contract was with them. But we also
2 understood that he was available as a resource to us.
3 On our first meeting Pat Dunleavy gave us his contact
4 information and said if you need to contact him,
5 contact him. She didn't say if you want to contact
6 him, let me know or if you want to contact him, let
7 Sister Anne know. She just gave us his card.

8 Q Okay. Let me ask you this, in your committee
9 deliberations did you actually view the videos that
10 Professor Fagal made and posted to You Tube?

11 A They were given the videos on a flash drive. We
12 viewed them individually, but not as a -- we
13 individually each borrowed the flash drive and watched
14 the video.

15 Q Okay. So it wasn't like a screen shot?

16 A No, it was not a screen shot. It was the actual
17 video on a flash.

18 Q Would you say that you did a scene-by-scene
19 analysis of the video?

20 MS. PEET: Objection.

21 BY MR. COHEN:

22 Q To examine the validity of the charges?

23 A To examine the validity of the charges, no.

24 That's not a format for making charges.

1 Q And you remember sending your draft, the
2 committee's draft to Will Anthony for his input. And
3 I'm not asking you what he said, don't tell me. You
4 did send it to him for seeking his input?

5 MS. PEET: Objection to the form.

6 THE WITNESS: I did.

7 BY MR. COHEN:

8 Q And he did provide input?

9 A Correct.

10 Q Did it ever occur to you that if you were asking
11 Will Anthony for his input, that he might be
12 communicating with Sister Munley or Pat Dunleavy about
13 your deliberations?

14 A No, that never occurred to us. We understood
15 that our conversations with him were privileged.

16 Q Why did you think that, that your conversations
17 with Will Anthony were not to be provided to the
18 administration?

19 A Because he's the attorney and we were contacting
20 him as a client.

21 Q But again earlier today you said that he
22 represented the university, right?

23 A That was what -- we understood that the
24 university was paying him and that that was who he has

1 Q What's not a format?

2 A A You Tube video is not a vehicle for making
3 formal charges.

4 Q I guess I don't understand. I'm not asking you
5 whether anyone was making charges by -- through a You
6 Tube video. I'm asking as part of your analysis of
7 whether President Munley's charges were appropriate,
8 did you do a scene-by-scene analysis of the video?

9 MS. PEET: Same objection. I don't
10 understand what it is you're seeking. If you do, then
11 by all means you can answer the question. I just don't
12 know what you mean by scene-by-scene analysis.

13 BY MR. COHEN:

14 Q Do you understand?

15 A We made a list of who he said what about.

16 Q Okay. Did you know that this video was in the
17 format of like a popular parody that people were doing?

18 A Yes, we did.

19 Q Okay. Did you see any other parodies based on
20 that movie?

21 A No.

22 Q Okay. Did you believe that Professor Fagal was
23 actually likening President Munley to Hitler?

24 MS. PEET: I'm sorry, can you repeat that?

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1 BY MR. COHEN:

2 Q Did you believe that Professor Fagal was
3 actually likening President Munley to Adolph Hitler?4 A In the context of satire, yes. We understood
5 that the video was a parody and the context was a
6 satire.

7 Q Right. Okay.

8 (Whereupon Bittel Exhibit 14 was marked for
9 identification.)

10 BY MR. COHEN:

11 Q Could you read this to yourself and let me know
12 when you're finished please.

13 A Okay.

14 Q And we're looking at an e-mail from Matthew
15 Povse to Sister Anne and you are CC'd as well as Doctor
16 O'Brien, right?

17 A Yes.

18 Q And Matthew Povse says we wanted you to know
19 that our report is in support of your actions in this
20 case, correct?

21 A Yes.

22 Q But at this point you were still, the committee
23 was still drafting its response, it wasn't finished
24 yet; right?1 Q Right. Did she ask for the final result before
2 you were finished?3 A She did not ask for the final result before we
4 were finished, no. She was concerned about the
5 timeline.6 MR. COHEN: Let's make this Bittel 15
7 please.8 (Whereupon Bittel Exhibit 15 was marked for
9 identification.)

10 BY MR. COHEN:

11 Q Could you view this, let me know when you are
12 finished including the attachment.

13 A Review the e-mail and the attachment?

14 Q Yes, please.

15 A Okay. I've read the document.

16 Q Do you recognize it?

17 A I do recognize it.

18 Q And on the first page there's a series of
19 exchange of e-mails between you and Sister Anne --

20 A Yes.

21 Q -- correct?

22 A Correct.

23 Q And you first tried to give her the committee's
24 review and it turns out there's changes and she asked

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Page 61

1 A We drafted the response. We did not submit it
2 to Sister Anne Munley as our formal response.3 Q Right. Did you tell -- or before Matthew Povse
4 sent this e-mail, were you aware, did you discuss with
5 him that he would inform President Munley that your
6 decision was going to be in support of her actions?

7 A I don't recall.

8 Q Okay. Were you surprised that Mr. Povse told
9 Sister Anne in advance that they were going to rule,
10 the committee was going to rule in favor of her
11 actions?12 A I guess not. I mean I understand draft at this
13 point as we've already made a decision and articulated
14 our decision and we're fine-tuning it, you know, that's
15 the point. We did not understand it as we're still
16 drafting, we're deliberating. The deliberations were
17 finished. We were fine-tuning the document that
18 explained our conclusions.19 Q Did the committee inform Professor Fagal in
20 advance of the final decision that they were going to
21 rule in favor of Sister Munley?22 A I don't believe so, but I don't recall for sure.
23 My understanding again going back to what we said
24 before is that Sister Anne wanted to know the timeline.

1 for a final copy, right?

2 A Yes. She didn't -- I had never used track
3 changes before and didn't know that the comments would
4 appear in the document.5 Q And this attachment is the version without track
6 changes?

7 A Correct.

8 Q Is this the final version of the committee's
9 review and Sister Anne Munley's decision?

10 A I believe so.

11 Q And do you know if -- in the first e-mail it
12 says hopefully this one will work, I'll ask Matt and Ed
13 to sign a hard copy as well. Do you know if there was
14 a copy ever signed?

15 A I don't remember.

16 Q Having read this just now, would it be fair to
17 say that the Ad Hoc Committee did not review whether
18 Professor Fagal's suspension was appropriate?19 MS. PEET: Objection to the form;
20 mischaracterization of testimony, asked and answered.
21 You can go ahead.22 THE WITNESS: We discussed whether the
23 suspension was justifiable, but our ruling was on the
24 termination because if you are -- I mean the revocation

<p style="text-align: center;">Page 62</p> <p>1 of tenure because if we find the higher, the more 2 serious charges are found to be justifiable, it doesn't 3 make sense that a lesser charge would not be 4 justifiable.</p> <p>5 BY MR. COHEN:</p> <p>6 Q And the committee's review -- let me ask you 7 this: Were you primarily responsible for generating a 8 draft of this, is this mostly your writing?</p> <p>9 A Yes. Yes. It started with the notes that we 10 took in a meeting when we were together and then we -- 11 then I put them into a document and made them, made 12 full sentences and things like that and then gave it to 13 the others for comment.</p> <p>14 Q And they provided some comments?</p> <p>15 A Yes.</p> <p>16 Q In paragraph A of the actual review --</p> <p>17 A Yes. And some of the language did come directly 18 from conversations or from other people because I know 19 some of the phrasing here is Ed's.</p> <p>20 Q Okay. In paragraph A the one that begins that 21 we acknowledge that revocation, do you see that?</p> <p>22 A Mm-mm.</p> <p>23 Q There's a sentence in that paragraph that says 24 we are mindful of the potential or perceived threat to</p>	<p style="text-align: center;">Page 64</p> <p>1 appropriate; correct?</p> <p>2 MS. PEET: Objection, mischaracterization 3 of testimony.</p> <p>4 BY MR. COHEN:</p> <p>5 Q You can still answer if you understand.</p> <p>6 A That the event that led to suspension and 7 termination are the event, was the same event in both 8 cases. So there was no need to prepare a second, a 9 separate document determining that as far as whether 10 the procedural elements that led to suspension were in 11 place, that's determined by the other committee.</p> <p>12 The Faculty Grievance Committee determines 13 whether procedure was followed in moving to suspend and 14 then moving later from suspension to termination. So 15 they already adjudicated the procedural aspect. We 16 were adjudicating whether the event, the action 17 itself --</p> <p>18 (Whereupon there was an interruption during 19 the deposition.)</p> <p>20 THE WITNESS: We were adjudicating whether 21 the action itself warranted those actions.</p> <p>22 BY MR. COHEN:</p> <p>23 Q Okay. So if you -- but it was your thought 24 process that if you had determined that the event</p>
<p style="text-align: center;">Page 63</p> <p>1 academic freedoms when a speech violation leads to 2 revocation of tenure, do you see that?</p> <p>3 A Yes.</p> <p>4 Q What do you mean by that?</p> <p>5 A That academic freedom is the -- academic freedom 6 protects the integrity of faculty work. And so any 7 time that -- and I think what was meant here by -- we 8 were very, very careful that we considered the larger 9 ramifications; does ruling in favor of Sister Anne 10 Munley's decision potentially compromise the academic 11 freedom of others, does it set a precedent.</p> <p>12 We ultimately, as you see in the statement, 13 determined that that was not the case because this is 14 not a case of academic freedom. Academic freedom did 15 not apply to this particular situation. But as tenure 16 faculty we were very aware of how important it is to 17 protect true academic freedom.</p> <p>18 Q I want to turn back to Bittel 5, it's the 19 progressive discipline policy.</p> <p>20 A Yes.</p> <p>21 Q A few minutes ago, correct me if I'm wrong, you 22 mentioned that if the committee had determined that 23 termination was appropriate, then there really would be 24 no point in deciding whether suspension was</p>	<p style="text-align: center;">Page 65</p> <p>1 itself warranted termination, that there was no point 2 in reviewing whether the event also warranted 3 suspension?</p> <p>4 MS. PEET: Objection, mischaracterization 5 of testimony.</p> <p>6 THE WITNESS: I guess I don't know.</p> <p>7 BY MR. COHEN:</p> <p>8 Q You don't understand my question?</p> <p>9 A No, I don't.</p> <p>10 Q Okay. You would agree that your committee did 11 not determine whether Professor Fagal's suspension was 12 appropriate, correct?</p> <p>13 MS. PEET: Objection, mischaracterization 14 of testimony. Go ahead.</p> <p>15 THE WITNESS: We discussed the suspension, 16 but we did -- but the event itself; if the event itself 17 we determined warranted -- we discussed the event 18 itself, the substantive aspects of the case. Whether 19 Sister Anne was out of line in suspending him in the 20 first place, that was the other committee because they 21 are responsible for procedural elements.</p> <p>22 BY MR. COHEN:</p> <p>23 Q So who -- which committee, if any, determined 24 whether Professor Fagal's suspension was substantively</p>

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<p>1 appropriate as opposed to procedurally appropriate?</p> <p>2 A That was ours. But if it was substantively</p> <p>3 appropriate for suspension -- if it was substantively</p> <p>4 appropriate; if a case was substantively appropriate</p> <p>5 for suspension, it may not be substantively appropriate</p> <p>6 for termination. But if a case is appropriate for</p> <p>7 termination, then of course the lesser charge applies</p> <p>8 as well; or it meets the lower standard for suspension</p> <p>9 if it meets the higher required for termination and the</p> <p>10 highest standard required for revocation of tenure</p> <p>11 which is an even higher standard.</p> <p>12 Q And is that why your review of President</p> <p>13 Munley's decision does not address whether the</p> <p>14 suspension was appropriate?</p> <p>15 MS. PEET: Asked and answered. You can go</p> <p>16 ahead one more time.</p> <p>17 THE WITNESS: Correct.</p> <p>18 BY MR. COHEN:</p> <p>19 Q Okay. If you look at Bittel 5.</p> <p>20 A Okay.</p> <p>21 Q Do you see at the bottom that there's a</p> <p>22 paragraph called suspension?</p> <p>23 A Yes.</p> <p>24 Q It says the faculty member may be suspended by</p>	<p>1 sentence Doctor Fagal's egregious violation of our core</p> <p>2 values especially the value of respect has caused grave</p> <p>3 and irreparable harm to our community. And above in --</p> <p>4 under charge one; we are in agreement that Sister Anne</p> <p>5 Munley is justified in saying that Doctor Fagal's</p> <p>6 actions constitute such an injury.</p> <p>7 BY MR. COHEN:</p> <p>8 Q Okay. Now, going back to this dismissal</p> <p>9 paragraph in Bittel Exhibit 5.</p> <p>10 A Okay.</p> <p>11 Q It mentions if remedial action is taken during</p> <p>12 the suspension, right?</p> <p>13 A Right.</p> <p>14 Q Now, your committee could not have determined</p> <p>15 whether remedial actions taken during the suspension</p> <p>16 resolved any issues that led to the suspension, right?</p> <p>17 MS. PEET: Objection. This is a complete</p> <p>18 mischaracterization of testimony. She already</p> <p>19 testified that they confirmed that remediation was not</p> <p>20 appropriate here. So what you're asking her is you're</p> <p>21 assuming what she said I think forgetting about it.</p> <p>22 She clearly talked about the remediation and how it</p> <p>23 impacts this case.</p> <p>24 THE WITNESS: Yes. We determined that</p>
Page 67	Page 69
<p>1 the vice president for academic affairs at any time</p> <p>2 during the proceedings involving him or her, suspension</p> <p>3 is justified if immediate harm to the faculty member or</p> <p>4 others is threatened by person's continuance of the</p> <p>5 faculty position; right?</p> <p>6 A Yes.</p> <p>7 Q And then below that there's a paragraph it says</p> <p>8 dismissal, right?</p> <p>9 A Mm-mm.</p> <p>10 MS. PEET: Is that a yes?</p> <p>11 THE WITNESS: Yes, it is a yes.</p> <p>12 BY MR. COHEN:</p> <p>13 Q It says if remedial actions taken during the</p> <p>14 suspension does not sufficiently resolve the issues</p> <p>15 that lead to the suspension, the university may move</p> <p>16 towards dismissal of the faculty member; right?</p> <p>17 A Yes.</p> <p>18 Q So doesn't that suggest that if a suspension is</p> <p>19 not appropriate, that the university cannot even try to</p> <p>20 terminate an employee?</p> <p>21 MS. PEET: Objection to the form. You can</p> <p>22 answer if you know.</p> <p>23 THE WITNESS: I don't know. We do say</p> <p>24 here, we do say that the -- we do say in the final</p>	<p>1 remediation, though the policy makes it possible does</p> <p>2 not say it has to be offered in every situation and we</p> <p>3 determined that this was not a situation where</p> <p>4 remediation was a fruitful avenue or was justified.</p> <p>5 BY MR. COHEN:</p> <p>6 Q So based on that view it was the committee's</p> <p>7 opinion that President Munley could move directly from</p> <p>8 suspension to termination?</p> <p>9 A She did not need to offer remediation before</p> <p>10 moving to termination, no, because remediation is not a</p> <p>11 guarantee.</p> <p>12 Q We're coming back to Bittel 15, paragraph C</p> <p>13 begins Doctor Fagal is given the opportunity to explain</p> <p>14 his video; do you see that?</p> <p>15 A Yes. This is the section where we give the</p> <p>16 background to our discussion of charges.</p> <p>17 Q And again this paragraph doesn't account,</p> <p>18 couldn't account for the fact that Doctor Fagal had</p> <p>19 asked for an opportunity to explain himself in writing;</p> <p>20 correct?</p> <p>21 A Correct.</p> <p>22 Q Because you didn't know that?</p> <p>23 A We did not know that.</p> <p>24 Q On the second page under charge two, again it</p>

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Page 72

1 says at the bottom the charge two it says while Doctor
 2 Fagal is correct in saying that he was not given an
 3 opportunity to respond to this point, there might have
 4 been one if he had answered Sister Anne Munley's
 5 questions on 23 January 2012 or if he had sought out
 6 additional opportunities to explain his actions in a
 7 subsequent meeting; right?

8 A Correct.

9 Q And again this is not correct because -- let me
 10 rephrase. If it is true that Doctor Fagal had asked
 11 for an opportunity to explain his -- himself in
 12 writing, this would not be correct; right?

13 A That last sentence would not be correct, but the
 14 other pieces of the evaluation would still stand;
 15 right. The first piece that says we didn't think that
 16 all insults qualify as Civil Rights violations and then
 17 our explanation of why it might apply in one case. So
 18 that point only applies to his charge that he didn't
 19 get an opportunity to respond to that point.

20 MR. COHEN: Let's call this Bittel 16
 21 please.

22 (Whereupon Bittel Exhibit 16 was marked for
 23 identification.)

24 - - -

1 me know when you're finished.

2 A Yes. Okay. I've read this.

3 Q On the second page there's -- it appears to be
 4 an e-mail from you to Doctor Dunleavy dated July 10,
 5 2012 at 10:04 a.m., correct?

6 A Yes.

7 Q This is in fact an e-mail that you wrote,
 8 correct?

9 A Yes.

10 MR. COHEN: Can you make this Bittel 18.
 11 (Whereupon Bittel Exhibit 18 was marked for
 12 identification.)

13 BY MR. COHEN:

14 Q I just want to know if you can confirm that this
 15 is your e-mail?

16 A This is my e-mail.

17 Q That's all I have.

18 MS. PEET: I have no questions for you.
 19 Thank you very much.

20 (Whereupon the deposition of Helen Bittel
 21 concluded at 12:39 p.m.)

22
23
24

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1 BY MR. COHEN:

2 Q And can you read this to yourself and let me
 3 know when you're finished.

4 A I've read it.

5 Q Do you recognize this?

6 A I do recognize it.

7 Q And you received this document?

8 A Yes, I did.

9 Q In this e-mail, this is an e-mail from Professor
 10 Fagal to you and the other committee members. He's
 11 essentially requesting that your committee convene to
 12 review the appropriateness of his suspension, right?

13 A Correct.

14 Q Following your receipt of this e-mail, you did
 15 not in fact reconvene to review the appropriateness of
 16 the suspension; right?

17 A No, we did not.

18 Q Do you need to take a break?

19 A I'm good.

20 MR. COHEN: Let's make this Bittel 17.

21 (Whereupon Bittel Exhibit 17 was marked for
 22 identification.)

23 BY MR. COHEN:

24 Q Could you read this to yourself please and let

1 CERTIFICATE
 2 COMMONWEALTH OF PENNSYLVANIA
 3) SS:

4 COUNTY OF WYOMING)
 5 I, Christine A. Messner, do hereby certify that
 6 before me, a Notary Public in and for the
 7 Commonwealth aforesaid, personally appeared Helen
 8 Bittel, Ph.D., who then was by me first duly cautioned
 9 and sworn to testify the truth, the whole truth, and
 nothing but the truth in the taking of his oral
 deposition in the cause aforesaid; that the testimony
 then given by him as above set forth was by me reduced
 to stenotypy in the presence of said witness, and
 afterwards transcribed by means of computer-aided
 transcription.

10 I do further certify that this deposition
 was taken at the time and place in the foregoing
 caption specified, and was completed without
 adjournment.

11 I do further certify that I am not a relative,
 counsel or attorney of either party, or
 otherwise interested in the event of this action.

12 IN WITNESS WHEREOF, I have hereunto set my hand and
 13 affixed my seal of office at Factoryville,
 Pennsylvania, on this ____ day of _____, 2016.

14
15
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24
Christine A. Messner, Notary Public
 In and for the Commonwealth of Pennsylvania
 My commission expires April 10, 2017

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1 COMMONWEALTH OF PENNSYLVANIA) E R R A T A
2 COUNTY OF WYOMING) S H E E T3 I, Helen Bittel, Ph.D., have read the foregoing
4 pages of my deposition given and wish to make the
5 following, if any, amendments, additions, deletions or
6 corrections:

7 Page/Line Should Read Reason for Change

8

9

10

11

12

13

14

15

16

17

18

19

20 In all other respects, the transcript is true and
correct.

21

22 _____
23 Subscribed and sworn to before me this _____ day of
24 _____, 2016.

Notary Public

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1 October 10, 2016
2 Jackson Lewis
3 Three Parkway, 1601 Cherry Street, Suite 1350
4 Philadelphia, Pennsylvania 19102
ATTN: Stephanie J. Peet, Esquire

5 NOTICE OF NON-WAIVER OF SIGNATURE

6 Please have the deponent read his deposition
7 transcript. All corrections are to be noted on the
preceding Errata Sheet. Upon completion of the above,
8 the deponent must affix his signature on the Errata
Sheet, and it is to then be notarized. Please forward
the signed original of the Errata Sheet to Jonathan Z.
9 Cohen, Esquire, for attachment to the original
transcript, which is in his possession, copying all
other counsel and myself.10 As per the rules, if the witness does not sign the
11 signature page within 30 days after receipt of the
transcript, signature is deemed waived.12
13 Christine A. Messner
14 Court Reporter15
16
17
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19
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21
22
23
24

Exhibit 48

EXHIBIT**48**

PENGAD 800-611-0008
 EXHIBIT
 Bittel
 9
 9/29/16 CAM

Redacted:
Attorney Client Privilege

From: **Bittel, Helen** <bittel@maryu.marywood.edu>
 Date: Fri, May 18, 2012 at 4:03 PM
 Subject: Ad Hoc Business
 To: Dr Patricia E Dunlcavy <dunlcavy@maryu.marywood.edu>

Dear Pat,

I just wanted to let you know (in case you need to know and to make sure we are moving appropriately) that, during yesterday's meeting, we agreed that our charge should be the review of substance the termination and denial of tenure charges. We understood that the issues of suspension and procedure were resolved by the FGC.

We would also like to see Fred's personnel file, if that is not privileged. We agreed, following our discussion, that the issue of whether there is a history of progressive discipline is germane to the termination charge (though not necessarily to the suspension).

Thank you for your support and consideration.

Best,
 helen

--
 Helen M. Bittel, Ph.D.
 Associate Professor and Chair
 Department of English
 Marywood University
 2300 Adams Ave.
 Scranton, PA 18509

--
 Patricia E. Dunleavy, Ph.D.
 Assistant Vice President for Human Resources
 Title IX Coordinator
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 2300 Adams Avenue

Scranton PA 18509
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570-348-6220 phone
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--
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570-961-4740 fax

Redacted:
Attorney Client Privilege

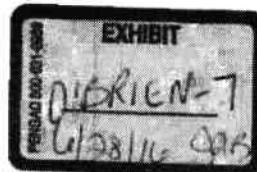
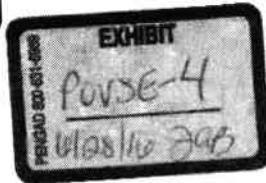
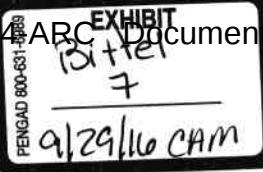
--
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Exhibit 49

49



Minutes. Ad Hoc Committee Meeting #2. May 17, 2012. 2-4p

Guest: Erin Sadlack, Chair of the Faculty Grievance Committee, with permission from PD and WJA.

Erin was invited to the meeting so that she could explain the scope of the work already done by the FGC. She opening by saying that when their group was convened, they were given the analogy of a grand jury, charged with determining whether a grievance is justifiable and worth moving forward. That group spent hours going over the documentation and understood that their decision was supposed to be final.

Helen asked Erin to explain more directly what the charge of the committee was and what questions they were supposed to answer.

EAS referred us to the PPM/FGA Section #4. The FGC notified SAM that a grievance was filed. They were charged with finding whether the grievance was justified and should go forward. They didn't meet with SAM or FF.

She explained that the FGC responded to 5 points made by FF in claiming that his suspension was improper because procedure was not followed. Their charge was to review whether procedure was properly followed, not to review the substance of SAM's decisions to suspend and to later terminate. Their procedural review was limited to the charge of suspension, not termination and revocation of tenure.

The committee's decision addressed points of procedure and affirmed that, in the case of FF's suspension:

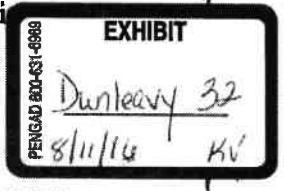
- The President (and not only the VPAA) can suspend and can recommend dismissal
- "Harm" can take many forms
- The PPM does not guarantee the right to remedial action (prior to suspension)
- The PPM does not guarantee the right to appeal suspension, only termination

The FGC informally (via Sr. Gail) advised FF to ask the ad hoc committee to review the substance of the termination charge. FF was very clearly told by EAS that the suspension was no longer appealable according to the PPM.

Erin understands that the decisions of the two committees cannot themselves be grieved.

After Erin left, we concluded that we (the AHC) are charged with reviewing the substance of the termination charge (dismissal and revocation of tenure).

Looking at the PPM: Progressive Discipline, we agreed that the policy recognizes problems that MAY BE remediated but does not imply that all problems can be remediated. That is



the right to remediation is not guaranteed.

Some of the questions we will consider going forward include:

- Can and should FF's problem (re: the video) be remediated? Who gets to decide whether a particular problem is remediable?
- Did FF in essence reject or refuse remediation, especially in his meeting with SAM on 1/23, when he refused to discuss the video?
- Should FF's production and dissemination of the video be understood as a personal problem (e.g. anger management) analogous to the kind of potentially remediable problems described in the Progressive Discipline policy (e.g. addiction, mental health crisis)?
- Does the video (understood as an escalation of inappropriate behavior) represent a failure of the progressive discipline system at Marywood?
- Where does what happened fit or not fit with the causes for revocation of tenure outlined in the Faculty Manual?

Actions:

- Helen will email PD and let her know that we understand our charge to be the review of substance the termination and denial of tenure charges. We understand that the issues of suspension and procedure were resolved by the FGC.
- After some discussion, we decided that it would be very helpful to see FF's personnel file because the question of whether there is a history of progressive discipline (or whether this is a "first offense") are germane. Helen will ask PD for access.
- Because the guidelines around revoking tenure are very sparse and out of sync with AAUP recommendations, we will, after we have resolved this case, ask Faculty Senate to ask for a revision to that section of the Faculty Manual.

Exhibit 50

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

- - -

FREDERICK F. FAGAL, JR. : CIVIL ACTION
:
Plaintiff, : NO. 3:14-cv-02404-ARC
:
vs. : (JUDGE CAPUTO)
:
MARYWOOD UNIVERSITY, :
:
Defendant. :

- - -

June 28, 2016

- - -

Oral deposition of Mathew R. Povse, taken pursuant to notice, was held at the Radisson Lackawanna Station Hotel, Suite 206, 700 Lackawanna Avenue, Scranton, Pennsylvania, commencing at 3 p.m., on the above date, before Judy A. Black, a Registered Professional Court Reporter and Notary Public in and for the Commonwealth of Pennsylvania.

- - -

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Seven Penn Center, 8th Floor

1635 Market Street

Philadelphia, Pennsylvania 19103

(866) 624-6221

Page 2

APPENDICES:
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 Attorneys for Plaintiff

JACKSON LEWIS, P.C.
 BY: STEPHANIE J. PEET, ESQUIRE
 Three Parkway
 1601 Cherry Street, Suite 1350
 Philadelphia, PA 19102
 (267) 319-7802
 Attorneys for the Defendant

ALSO PRESENT:

FREDERICK F. FAGAL, JR.
 PATRICIA DUNLEAVY

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Povse-6 Document, Bates Nos. 19
 DEF000143-144
 Povse-7 E-mail chain, Bates Nos. 20
 DEF000353-356
 Povse-8 Faculty Grievance Committee 22
 Meeting, June 19, 2012, Bates
 Nos. DEF001510-512
 Povse-9 E-mail dated June 25, 2012, Bates 28
 No. DEF000393
 Povse-10 E-mail Bates No. DEF0024530 30
 Povse-11 E-mail dated July 2, 2012, with 31
 attachment, Bates Nos. DEF001515-521
 Povse-12 E-mail dated July 5, 2012, with 31
 attachment, Bates Nos. DEF001585-590
 Povse-13 E-mail dated July 6, 2012, with 38
 attachment, Bates Nos. DEF001494-496
 Povse-14 E-mail chain, Bates Nos. 42
 DEF001611-615
 Povse-15 E-mail dated July 15, 2012, Bates 44
 No. DEF001513

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DEPOSITION SUPPORT INDEX

Direction to Witness Not to Answer
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 None

Request for Production of Documents
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 None

Stipulations
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 5 1

Question Marked
 Page Line Page Line Page Line
 None

EXHIBITS

NUMBER	DESCRIPTION	PAGE
Povse-1	Letter dated February 8, 2012, with attachments, Bates Nos. DEF000207-226	10
Povse-2	E-mail dated May 6, 2012, with attachments, Bates Nos. DEF001433-442	11
Povse-3	Minutes for Ad Hoc Committee Meeting #1, May 11, 2012, Bates Nos. DEF001408-509	12
Povse-4	Minutes for Ad Hoc Committee Meeting #2, May 17, 2012, Bates Nos. DEF000322-323	16
Povse-5	E-mail dated May 22, 2012, with attachments, Bates Nos. DEF000337-342	18

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1 ---

2 **STIPULATIONS**

3 ---

4 IT IS STIPULATED by and between counsel
 5 that the Deposition of Mathew R. Povse, is
 6 being taken pursuant to agreement and that all
 7 objections, except as to form, are reserved
 8 until the time of trial. Mathew R. Povse does
 9 not waive the reading, signing, and filing of
 10 the Deposition.

11 ---

12 M A T H E W R. P O V S E,
 13 having been duly sworn, was examined and
 14 testified as follows:

15 ---

16 **DIRECT EXAMINATION BY MR. COHEN:**

17 Q. Mr. Povse, my name is Jonathan Cohen. I
 18 represent Frederick F. Fagal, Jr.

19 Have you ever had your deposition taken?
 20 A. No.

21 Q. Okay. The way it works, as I'm sure
 22 Stephanie has explained to you, is that I ask you
 23 questions and you're supposed to answer to the best
 24 of your ability and to the best of your knowledge and

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1 memory. If my question is not clear to you, feel
 2 free to tell me that and I'll try to rephrase. If
 3 you think you can anticipate my question, I would
 4 still ask that you wait until I'm finished, because
 5 the court reporter has to take everything down. Two
 6 people talking at once is a mess.

7 Also, your attorney, you know, once I'm
 8 finished asking a question, Ms. Peet over here may
 9 want to make an objection, and she may or may not
 10 want you to answer the question.

11 Is all that clear to you?

12 A. Um-hum.

13 Q. And you understand today that you're
 14 under the same oath today that you would be in a
 15 courtroom?

16 A. Yeah.

17 Q. Is there anything that would prevent you
 18 from thinking clearly and testifying truthfully
 19 today, such as medication?

20 A. No.

21 Q. And if at any time you need to take a
 22 break during the deposition, just let me know.

23 A. Yeah.

24 Q. What is your educational background,
 MAGNA LEGAL SERVICES

1 Mr. Povse?
 2 Do you want me to call you Mr. Povse or
 3 Mat?

4 A. Mat is fine.
 5 What is my educational background?
 6 Q. Yes.
 7 A. I have one bachelor's degree in fine
 8 arts and two MFAs, graduate degrees, in fine arts.
 9 Q. And what are those degrees?
 10 A. They specialize in ceramics and
 11 sculpture.

12 Q. I mean, is it like a master's degree?
 13 A. Yeah, BFA, bachelor of fine arts, and
 14 two master's of fine arts, which is considered a
 15 terminal degree in the area, the visual arts area.
 16 Q. And you are currently employed by
 17 Marywood University?

18 A. I am ending -- I am currently employed
 19 and close to the end. I'm retiring.

20 Q. Oh, really?
 21 A. Yes.
 22 Q. For how long have you worked for
 23 Marywood?
 24 A. I believe it's around 27 years,

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1 approximately.
 2 Q. And are you a tenured professor?
 3 A. Yes.
 4 Q. When did you attain tenure?
 5 A. I can't really tell you that. I don't
 6 remember.
 7 Q. So long ago --
 8 A. I have a bad memory, I have to warn you.
 9 Q. Okay. Is this the first time you are
 10 seeing my client, Professor Fagal?

11 A. Well, I think, actually I -- up to this
 12 point I did not put together the face and the name.
 13 Now that I've seen you walk in, I remember seeing you
 14 on campus, but I -- that's about it.

15 Q. So you had never spoken to him?
 16 A. I may have said hello.
 17 Q. Okay. And prior to what you learned as
 18 serving in the committee regarding Professor Fagal,
 19 you really knew nothing about him?

20 A. Very little.
 21 Q. Did you prepare at all for today's
 22 deposition?
 23 A. I looked at some of the files, notes,
 24 that were accessible to me, try to refresh my memory.

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1 Q. And what documents did you review?
 2 A. Oh --
 3 Q. If any?
 4 A. I don't know. Lots of letters, lots of
 5 memos. Whatever I had accessible to me.
 6 MR. COHEN: Can we also have this marked
 7 as Povse-1.
 8 (Povse-1, Letter dated February 8, 2012,
 9 with attachments, Bates Nos. DEF000207-226, is
 10 received and marked for identification.)
 11 Q. And, Mr. Povse, can you briefly review
 12 this and let me know whether you recognize it?
 13 A. I -- this is from -- I think I've seen
 14 it.
 15 Q. Is this the statement of charges that
 16 President Munley made against Professor Fagal and
 17 that your committee was asked to review?
 18 A. I would say -- I would say yes.
 19 Q. Okay. And you served on what's called
 20 an ad hoc committee, correct?
 21 A. Yes.
 22 Q. And that committee consisted of you,
 23 Edward O'Brien and Helen Bittel, correct?
 24 A. Yes.

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1 review much of anything for this --
 2 Q. But you've --
 3 A. -- for this meeting. But I've seen
 4 this.
 5 Q. Do you remember reading the whole thing
 6 at any time?
 7 A. Well, I prob -- I'm sure that I read it
 8 when we were meeting. And, again, you know, there
 9 was so much information that we had that I can't
 10 recall. But I would -- whatever information we were
 11 given, I could assure you that I read at the time we
 12 were meeting for that committee.
 13 Q. Okay.
 14 MR. COHEN: Let's take O'Brien-6 and
 15 call it also Povse-3.
 16 (Povse-3, Minutes for Ad Hoc Committee
 17 Meeting #1, May 11, 2012, Bates Nos. DEF001408-509,
 18 is received and marked for identification.)
 19 Q. Mr. Povse, do you recognize this
 20 document?
 21 A. It looks familiar. Yeah.
 22 Q. What is it?
 23 A. Minutes from our -- looks like our first
 24 meeting.

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1 Q. And the job of your committee was to
 2 adjudicate the charges that President Munley lodged
 3 against Professor Fagal, correct?
 4 A. To an extent.
 5 Q. What do you mean by "to an extent"?

6 A. We were to look at the substantive
 7 portion of the charge, not the procedural, so --
 8 Q. Okay.
 9 A. That's what we were looking at.
 10 MR. COHEN: Can you mark O'Brien-5 also
 11 as Povse-2.
 12 (Povse-2, E-mail dated May 6, 2012, with
 13 attachments, Bates Nos. DEF001433-442, is received
 14 and marked for identification.)
 15 Q. And can you briefly review this and let
 16 me know whether you recognize this document?
 17 A. It looks familiar.
 18 Q. Would you say that this is Professor
 19 Fagal's written defense to President Munley's
 20 charges?
 21 A. Well, it's his explanation.
 22 Q. Okay. Did you review this document in
 23 preparing for today's deposition?
 24 A. I've seen it. I don't know -- I didn't

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1 Q. Do you know who made the comments on the
 2 right side of the page?
 3 A. No. Let me -- no.
 4 Q. Okay. But you know that it wasn't you?
 5 A. No, I can't really say.
 6 Q. Okay. On the first paragraph, last
 7 sentence, there's a sentence that begins, "Helen
 8 knows FF casually." Do you see that?
 9 A. Yeah. Yeah.
 10 Q. And then it says, "Some of her
 11 conversations with him have been, quote, strange, but
 12 the relationship has been collegial." Do you
 13 remember Helen explaining what she meant by having
 14 strange conversations with Professor Fagal?
 15 A. No, I don't remember. I don't remember
 16 if she expounded on that.
 17 Q. If you look down at the bottom of this
 18 page, it says, "5/3," which I guess is for May 3rd,
 19 "AHC meets with HR and Sister Gail." Do you -- and
 20 AHC means ad hoc committee, correct?
 21 A. Correct.
 22 Q. And do you remember meeting with HR and
 23 Sister Gail?
 24 A. I know we did. That's about all I

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1 remember.

2 Q. Do you remember what was discussed at
3 that meeting?

4 A. No.

5 Q. And you know that Patricia Dunleavy is
6 head of HR for Marywood, right?

7 A. Yes.

8 Q. And was at that time, right?

9 A. Yes.

10 Q. Do you remember asking Dr. Dunleavy
11 whether there would be two committees for Professor
12 Fagal, one to review his suspension and one for
13 termination?

14 MS. PEET: As stated, I think it's
15 confusing and implies facts not in evidence.

16 If you understand the question, you can
17 go ahead and answer it.

18 A. Repeat your question again.

19 Q. At any time do you recall asking
20 Dr. Dunleavy whether there would be two committees to
21 review the discipline imposed on Professor Fagal, one
22 of them to review his suspension and the other for
23 termination?

24 MS. PEET: Same objection. You can
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1 was mentioned somewhere along the line.

2 Q. How did his name first come up for you?

3 A. I don't know.

4 Q. This meeting with Dr. Dunleavy and
5 Sister Gail, did the name Jackson Lewis come up?

6 A. Jackson Lewis?

7 Q. Yes.

8 A. Doesn't sound familiar.

9 Q. Okay.

10 MR. COHEN: We'll take O'Brien-7 and
11 mark this as Povse-4, please.

12 (Povse-4, Minutes for Ad Hoc Committee
13 Meeting #2, May 17, 2012, Bates Nos. DEF000322-323,
14 is received and marked for identification.)

15 Q. Mr. Povse, can you -- why don't you read
16 this entire document to yourself and let me know when
17 you're finished.

18 A. All right. Okay.

19 Q. Have you ever seen this before?

20 A. Yeah. Yeah, looks familiar.

21 Q. Did you review this document for today's
22 deposition?

23 A. No.

24 Q. Do you think this accurately reflects
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1 answer.

2 Q. Unless your attorney says -- instructs
3 you not to answer, you pretty much have to answer.
4 To the best of your ability.

5 MS. PEET: Yes.

6 A. Okay. I don't --

7 Q. You don't remember?

8 A. I don't remember. That's the problem.

9 Q. Do you remember --

10 A. If this was a meeting right at the very
11 start of this committee, I doubt very much if I asked
12 that question, since I knew so very little in the
13 beginning.

14 Q. Do you remember anybody else on the
15 committee asking that question?

16 A. No.

17 Q. Do you remember the name Will Anthony?

18 A. Yeah.

19 Q. Did you -- at this meeting with HR and
20 Sister Gail, did you discuss the possibility of
21 talking to Will Anthony?

22 A. I'm not sure his name came up at that
23 meeting. I know -- I'm aware that he was an attorney
24 associated with Marywood, and I know that his name

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1 what occurred during the May 17, 2012 meeting?

2 MS. PEET: Objection to form. You can
3 answer.

4 A. I could -- I would -- you know, trying
5 to reach back that far, I'm going to say yeah.

6 Q. Let me ask it this way: Do you have any
7 reason to doubt the accuracy of any part of this? Is
8 there any part of it that stands out as unlikely or
9 inaccurate to you?

10 A. No.

11 Q. Now, on the second page -- scratch that.

12 On the second page, do you see the
13 heading "Actions"?

14 A. Yeah.

15 Q. And then there's several bullet points
16 under each. The first bullet point says, "Helen will
17 e-mail TD." Do you see that?

18 A. Um-hum.

19 Q. Does this bullet point also reflect your
20 understanding of the role of your committee?

21 A. Yeah.

22 Q. And how did you form that understanding?

23 A. How did I form that? How did I -- I
24 guess it was based -- and, again, I'm trying to

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1 recall all this, but I would assume it was based on
 2 all of the information of -- that we were given as
 3 far as our charge is concerned.

4 Q. Was it also based partly on advice you
 5 received from Erin Sadlack?

6 MS. PEET: Objection to --

7 A. I don't remember.

8 MS. PEET: Objection to form.

9 Q. Do you know who Erin Sadlack is?

10 A. Yeah.

11 Q. And she was a guest --

12 A. Right.

13 Q. -- at this meeting, correct?

14 A. Right, right.

15 Q. Do you actually remember her being
 16 there?

17 A. Well, I remember her being there, yeah.
 18 That's probably about it. I do remember I met with
 19 her.

20 MR. COHEN: O'Brien-8, could we have
 21 this marked, please, as Povse-5, as well.

22 (Povse-5, E-mail dated May 22, 2012,
 23 with attachments, Bates Nos. DEF000337-342, is
 24 received and marked for identification.)

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1 Q. Do you recognize this document,
 2 Mr. Povse, as well as the attachments?

3 A. Yeah.

4 Q. Yes?

5 A. Yes.

6 Q. In these attachments -- these
 7 attachments appear to be minutes for ad hoc committee
 8 meetings, correct?

9 A. Um-hum.

10 Q. And there are comments on the right side
 11 of each --

12 A. Yes.

13 Q. -- document.

14 Do you know whether these comments were
 15 ever adopted into the final version of these minutes?

16 A. No.

17 Q. Okay.

18 MR. COHEN: Let's take O'Brien-11 and
 19 also mark it as Povse-6, please.

20 (Povse-6, Document, Bates Nos.
 21 DEF000143-144, is received and marked for
 22 identification.)

23 Q. Do you recognize this document,
 24 Mr. Povse?

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1 MS. PEET: Is that also a Sadlack
 2 document?

3 MR. COHEN: Yes.

4 MS. PEET: And it's Povse what?

5 MR. COHEN: 6.

6 A. I don't -- I don't recall it, to be
 7 honest with you. I may have seen it. If it was
 8 given to us, I saw it, but I don't remember it.

9 Q. Okay.

10 MR. COHEN: Can we take O'Brien-9 and
 11 mark this as Povse-7, as well, please?
 12 (Povse-7, E-mail chain, Bates Nos.
 13 DEF000353-356, is received and marked for
 14 identification.)

15 Q. Do you recognize any part of this
 16 document, Mr. Povse? You might have to take some
 17 time to review it.

18 A. It looks familiar.

19 Q. Part of this on the first page, there's
 20 an e-mail from Dr. O'Brien to you and Helen dated
 21 June 2nd, 2012, right?

22 A. Um-hum. Um-hum.

23 Q. Do you remember receiving this?

24 A. Yeah.

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1 Q. And the second paragraph that begins,
 2 "My current inclination," could you read that to
 3 yourself and let me know when you've finished?

4 A. Okay.

5 Q. So this paragraph has four questions or
 6 topics that Dr. O'Brien wanted to raise with
 7 President Munley, correct?

8 A. Um-hum.

9 MS. PEET: Objection to the form.

10 Q. And do you know whether, in fact,
 11 anybody on your committee ever asked these questions
 12 of President Munley?

13 A. I know I didn't. I really -- again, I
 14 apologize, but I cannot remember. I -- I can't
 15 remember. I know I didn't. I know these were issues
 16 that we talked about, and I would think that -- that
 17 someone did.

18 Q. Do you remember whether President Munley
 19 ever met with your committee?

20 A. I don't remember -- I know she didn't
 21 meet with me.

22 Q. Not with you?

23 A. Not with me, no.

24 Q. But you don't know whether she met with

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1 someone --
 2 A. I don't. I swear I don't.
 3 Q. That's okay. But you don't know if she
 4 met with someone else on the committee without you
 5 there?
 6 A. I don't remember.
 7 Q. And on the next paragraph, it begins, "I
 8 also think we may want to interview Fred by phone."
 9 A. Um-hum.
 10 Q. You don't remember ever interviewing
 11 Fred by phone, right?
 12 A. No. No.
 13 Q. And no one else on the committee did,
 14 either, right?
 15 A. That, I don't know. I know I never
 16 talked to Fred.
 17 Q. You don't remember a decision ultimately
 18 being made on whether to interview him, Fred, at all?
 19 A. No.
 20 MR. COHEN: Okay. Can we make
 21 O'Brien-12 Povse-8.
 22 (Povse-8, Faculty Grievance Committee
 23 Meeting, June 19, 2012, Bates Nos. DEF001510-512, is
 24 received and marked for identification.)

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1 idea what that was based on. I don't remember. I
 2 have no idea.
 3 Q. Well, as you sit here today, do you
 4 wonder whether Marywood's administration has had any
 5 second thoughts about terminating Fred?
 6 A. No, no, and I certainly have no second
 7 thoughts as far as my personal vote. So, again, I
 8 don't know what that referred to and I cannot
 9 remember.
 10 Q. Okay. On the last page, last two
 11 paragraphs say, "Povse will contact Anne Munley and
 12 apprise her of our progress."
 13 A. Um-hum.
 14 Q. Do you remember actually contacting Anne
 15 Munley?
 16 A. Yes. Yeah.
 17 Q. Why was that something you wanted -- or
 18 the committee wanted to do, keep President Munley
 19 apprised of the progress?
 20 A. I'm not sure. We might have -- I don't
 21 know. I don't know what -- if there was a deadline
 22 we were working towards or what. I don't know.
 23 Q. Did you think it was important at all --
 24 did you think about keeping Professor Fagal apprised

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1 Q. And could you read this to yourself and
 2 let me know when you're finished?
 3 A. All right.
 4 Q. Have you ever seen this document before?
 5 A. Yes, it looks familiar.
 6 Q. Did you generate this document?
 7 A. Did I generate it? I don't know.
 8 Q. You're not sure if you did?
 9 A. Hmm?
 10 Q. You're not sure if you did?
 11 A. No, I don't know. I may have been the
 12 note taker that day.
 13 Q. And on the third paragraph, the one that
 14 begins, "We then took our first vote," and the last
 15 sentence of that paragraph says, "Povse expressed
 16 agreement with these but also wondered whether the
 17 administration has since had any second thoughts
 18 about their decision." Did I read that correctly?
 19 A. Yes.
 20 Q. Do you remember expressing those
 21 sentiments?
 22 A. I -- the minute I read this, I realized
 23 that it's -- in my opinion, it's out of context. I
 24 have no idea right now why I said that. I have no

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1 of the progress of the committee?
 2 A. I would have to say I don't -- I don't
 3 know what I was thinking of at the time, but I would
 4 say I wouldn't have thought it was appropriate at
 5 that point.
 6 Q. Why was it appropriate to keep President
 7 Munley advised at that point of the committee's
 8 progress?
 9 A. I guess it was just to notify her that
 10 we had more or less come to a decision for what our
 11 committee was charged.
 12 Q. Did you come to a decision before
 13 actually issuing a formal decision?
 14 A. Yeah. Well, whatever was here.
 15 Q. Did you view your -- the committee's
 16 role as simply a formality that you had to go through
 17 before President Munley could get the decision she
 18 wanted, or no?
 19 A. I didn't consider it to be a mere
 20 formality at all. I mean, I realize the seriousness
 21 of this whole event, so -- I mean, it was a process
 22 that was part of the whole thing.
 23 Q. Then the next sentence, it says, "After
 24 we workshop our draft, we will send it to Will

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1 Anthony for comment." Do you know if the committee
 2 did, in fact, send the draft to Will Anthony for
 3 comment?

4 A. I don't remember.

5 Q. Do you remember receiving anything from
 6 Will Anthony in writing in response to the draft?

7 A. No.

8 Q. And why did you think it was important
 9 or useful to send Will Anthony -- or to even plan on
 10 sending Will Anthony a draft for comment?

11 MS. PEET: Objection to the form.

12 THE WITNESS: Pardon me?

13 MS. PEET: Objection to the form. I'm
 14 just noting it for the record. You can answer.

15 A. I can answer. Well, I guess he was the
 16 school attorney. You know, I guess that he was part
 17 of the whole process.

18 Q. The next sentence, or it's more of a
 19 question, says, "Is he an independent voice or does
 20 he work for Munley/Marywood?" Is that a thought that
 21 occurred to you, whether he was an independent?

22 A. That seems -- that's curious, that
 23 sentence there. I -- I -- I don't understand that
 24 question. My understanding was that Will Anthony was

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1 professor's discipline is not necessarily the same
 2 interest as the president has?

3 A. Yeah.

4 MS. PEET: Objection to the form.

5 Q. You would agree?

6 A. Yeah.

7 Q. So that in that case, you didn't cite as
 8 part of a -- of a conflict of interest for your
 9 committee to be showing a draft of your deliberations
 10 to the university's attorney?

11 MS. PEET: Objection to the form.

12 A. No.

13 Q. Did you think the university's attorney
 14 was sharing what he learned with President Munley?

15 MS. PEET: Objection to the form. Calls
 16 for speculation, lack of foundation, calls for
 17 consideration of evidence not on the record.

18 A. I don't know. I may not have been
 19 considering that.

20 MR. COHEN: Okay, let's take O'Brien-13
 21 and mark it whatever we're up to in Povse.

22 (Povse-9, E-mail dated June 25, 2012,
 23 Bated No. DEF000393, is received and marked for
 24 identification.)

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1 an attorney for the school.

2 Q. Did you know at the time before your
 3 deliberations -- before your committee deliberations
 4 began, did you know that Mr. Anthony and an attorney
 5 for Professor Fagal were kind of arguing out this
 6 procedure in writing?

7 MS. PEET: Objection to form.

8 A. No.

9 Q. So you don't know that there was, like,
 10 an adversarial --

11 A. No. No, I didn't know anything about
 12 that.

13 Q. You knew that there was a possibility in
 14 any committee review of a president -- of a
 15 president's decision, there was possibility that you
 16 may not agree with the president, right?

17 A. Sure.

18 Q. So wouldn't you agree that the interests
 19 of the committee were not necessarily in line with
 20 the interests of the president?

21 MS. PEET: Objection to the form.

22 A. Ask me that question again.

23 Q. Wouldn't you agree that the interest of
 24 your committee or any ad hoc committee reviewing a

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1 Q. Mr. Povse, do you recognize this
 2 document? I'll give you a chance to review it.

3 A. It looks familiar.

4 Q. And do you remember, in fact, providing
 5 a draft of your response to Mr. Anthony?

6 A. No, I don't, but I have to assume that
 7 we did.

8 Q. And why did you feel the need to advise
 9 Sister Anne that your committee's report would be in
 10 support of her actions in Professor Fagal's case?

11 MS. PEET: Objection to form.

12 A. Common courtesy.

13 Q. What about common courtesy to Professor
 14 Fagal?

15 MS. PEET: Object to the form.

16 A. Again, I -- I was under the impression
 17 that we -- you know, we were working for the school.
 18 In a way, we were charged, and in our charge, we
 19 weren't told to keep Dr. Fagal in the loop.

20 Q. Were you told to keep President Munley
 21 in the loop?

22 A. I don't think so. I think this was just
 23 keeping the administration apprised of where we were.

24 MR. COHEN: Let's have this marked as

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1 Povse-10.
 2 (Povse-10, E-mail Bates No. DEF00245, is
 3 received and marked for identification.)
 4 Q. Why don't you briefly review this,
 5 Mr. Povse, and let me know if you recognize it.
 6 A. Yeah, I guess I recognize it. It's --
 7 I'm sure.
 8 Q. Do you remember sending the e-mail on
 9 June 29, 2012, at 12:08 p.m. to Dr. Dunleavy?
 10 A. No, I don't remember it, but I'm sure I
 11 did.
 12 Q. Do you remember receiving the e-mail
 13 above it from Dr. Dunleavy?
 14 A. I don't remember, but, again, it's in
 15 front of me.
 16 Q. You don't have any reason to doubt that
 17 this is authentic?
 18 A. Right, right.
 19 MR. COHEN: I'd like to take O'Brien-14
 20 and also mark this as Povse Exhibit 11.
 21 (Povse-11, E-mail dated July 2, 2012,
 22 with attachment, Bates Nos. DEF001515-521, is
 23 received and marked for identification.)
 24 Q. Do you recognize this e-mail and the
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1 attachment?
 2 A. Yeah, I recognize it.
 3 Q. And the attachment is your committee's
 4 review of Sister Anne's decision to terminate
 5 Professor Fagal's employment, correct?
 6 A. This attachment here?
 7 Q. Yes.
 8 A. Yes.
 9 Q. And do you know if this is the final
 10 version? Because it appears to me that there's still
 11 track changes here. Do you know what I mean by track
 12 changes?
 13 A. No.
 14 Q. If you see the edits, like the lines on
 15 the left?
 16 A. Um-hum.
 17 Q. Do you know if this was the final
 18 version?
 19 A. I can't tell you.
 20 MR. COHEN: Okay, let's take O'Brien-15
 21 and mark this as Povse-12, please.
 22 (Povse-12, E-mail dated July 5, 2012,
 23 with attachment, Bates Nos. DEF001585-590, is
 24 received and marked for identification.)
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1 Q. Do you recognize this document and the
 2 attachment to it?
 3 A. Yeah.
 4 Q. This is another copy of your committee's
 5 review, correct?
 6 A. Um-hum.
 7 Q. But there are no edits here. Do you see
 8 that?
 9 A. Um-hum.
 10 Q. Do you know whether this was the final
 11 version of your review or not?
 12 A. No.
 13 Q. Do you know if -- do you remember
 14 signing a hard copy version of your review, your
 15 committee's review?
 16 A. I don't remember. I would think that I
 17 did, but I don't remember. I would think that we
 18 signed off on it.
 19 MS. PEET: If you don't know, the answer
 20 is you don't know.
 21 A. I don't know.
 22 Q. Would it be fair to say, Mr. Povse, that
 23 your committee reviewed whether Professor Fagal's
 24 termination was proper?
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1 A. Yes.
 2 Q. Would it also be fair to say that your
 3 committee reviewed whether Professor Fagal's
 4 suspension was proper?
 5 A. Yes.
 6 Q. In this document that we were just
 7 looking at, the review of President Munley's
 8 decision, do you know whether it mentions your
 9 analysis of Professor Fagal's suspension?
 10 MS. PEET: Objection to the form.
 11 A. What's the question?
 12 Q. Does this review contain any analysis
 13 about whether Professor Fagal's suspension was
 14 appropriate?
 15 A. I don't know. I'd have to look through
 16 this. I'd have to read it thoroughly.
 17 Q. Okay. If it's not in there, would it be
 18 fair to say that it wasn't memorialized?
 19 MS. PEET: Objection.
 20 A. No.
 21 Q. If the suspension was reviewed, would it
 22 be odd for it not to be mentioned in your review?
 23 MS. PEET: Objection,
 24 mischaracterization of testimony. He just testified
 MAGNA LEGAL SERVICES

1 that it was reviewed.

2 A. I'm getting confused here.

3 MS. PEET: Exactly. That's what he's
4 trying to do and I don't want you to get confused.

5 A. Ask me that question.

6 Q. We'll skip ahead.

7 Before your committee convened to review
8 Professor Fagal's discipline, do you recall that
9 there was another committee, a faculty grievance
10 committee, that also reviewed parts of Professor
11 Fagal's discipline?

12 A. Yeah.

13 MS. PEET: Objection to the form.

14 Q. And what was your understanding of what
15 the first committee did?

16 A. It was the procedure that they were
17 looking at of the events, and I can't really say
18 that, first of all, I have a memory of exactly what
19 their job was or duties were. I know that we did
20 meet with Erin and got more information as to their
21 committee and what they were charged with.

22 Q. Coming back to this last exhibit with
23 the review of President Munley's decision --

24 MS. PEET: I'm sorry, which exhibit is
MAGNA LEGAL SERVICES

1 say that the words were probably created, formulated,
2 by both Helen and Ed, because they had more talent in
3 that department, but I certainly agreed with anything
4 and everything that's -- that's in this document. We
5 are mindful of the potential perceived threat to
6 academic freedom when a speech violation leads to
7 revocation of tenure. I mean, it's pretty obvious
8 that, you know, that's pretty thin ice. That's scary
9 stuff right there. And we were certainly mindful of
10 it.

11 Q. Would you say that Drs. Bittel and
12 O'Brien were more heavily involved in the committee's
13 deliberations than you were?

14 MS. PEET: Objection to the form.

15 A. They put it into words, I think, better
16 than I did, but our sentiments were the same. We
17 were in full agreement with each other.

18 Q. Did you feel -- let me ask it this way:
19 Do you wish that you had never served on this ad hoc
20 committee?

21 MS. PEET: Objection to form.

22 A. No. No.

23 Q. Do you feel like you were under pressure
24 to make a particular decision?

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1 it again, Povse-12?

2 MR. COHEN: Yes.

3 Q. Can you turn to part A of the decision,
4 the one that begins with, "We acknowledge that"? Do
5 you see that?

6 A. Um-hum.

7 Q. And further down, do you see the
8 sentence that says, "We are mindful of the potential
9 or perceived threat to academic freedoms when a
10 speech violation leads to revocation of tenure"?

11 A. Um-hum.

12 Q. And you had a role in -- would it be
13 fair to say you had a role in generating this
14 document?

15 A. Um-hum.

16 Q. What did --

17 MS. PEET: Keep your answers verbal,
18 make sure. Is that a yes or a no?

19 A. Yes.

20 Q. Yes, you did have a role?

21 A. Yes.

22 Q. What did you mean by this sentence, "We
23 are mindful of the potential" --

24 A. I would -- first of all, I would have to

MAGNA LEGAL SERVICES

1 A. No. No.

2 Q. And is that because you were already
3 tenured at the time?

4 A. No, no. No, I -- no.

5 Q. You had no fear that a decision
6 against -- even if it did not support President
7 Munley's decision would lead to adverse consequences?

8 A. No.

9 Q. Why not?

10 A. I don't know. It didn't -- it didn't
11 enter my mind. I don't know. Fearless.

12 Q. You were fearless? That's a good
13 answer.

14 Looking back on it, do you think it
15 would have been appropriate to have more fear that
16 deciding -- making a decision that did not support
17 President Munley would have adverse consequences?

18 MS. PEET: Objection.

19 A. No. And it really never entered my
20 mind.

21 Q. You're aware that your committee had to
22 consist -- was required to consist of tenured
23 professors, right?

24 A. Yes.

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1 Q. And why do you think that was?
 2 MS. PEET: Objection, calls for
 3 speculation.
 4 THE WITNESS: Can I answer that?
 5 MS. PEET: Absolutely.
 6 A. That's really the process that
 7 everything is decided by at a university. I mean,
 8 the tenured faculty are the most respected faculty.
 9 I mean, most faculty members, if they were faced with
 10 any kind of committee and decisions being made about
 11 them would, I assume, prefer to have tenured faculty
 12 because of their experience, dedication to the
 13 school. And that's law of the land, really, when it
 14 comes to committees and all, for the most part.
 15 MR. COHEN: Okay. This is O'Brien-16.
 16 Can we mark this as the next Povse exhibit?
 17 (Povse-13, E-mail dated July 6, 2012,
 18 with attachment, Bates Nos. DEF001494-496, is
 19 received and marked for identification.)
 20 Q. Just if you could briefly review this
 21 and let me know whether you recognize it.
 22 A. Yes, I recognize it.
 23 Q. You do recognize it?
 24 A. Yes.

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1 A. Yes.
 2 Q. And you don't remember -- did the
 3 committee respond to Professor Fagal's e-mail?
 4 A. I don't remember.
 5 Q. Did you convene again to review the
 6 suspension?
 7 A. I don't think so.
 8 Q. Do you know why?
 9 A. We -- no, I don't remember. But I would
 10 say that we felt as though it wasn't necessary for
 11 our committee to do that.
 12 Q. There's an -- actually there's an
 13 attachment to this e-mail.
 14 A. Yeah.
 15 Q. And -- on the last page. Do you see
 16 that? It's from Sister Cabral to Professor Fagal.
 17 A. Um-hum.
 18 Q. Do you remember reading this e-mail,
 19 this attachment?
 20 A. No, I don't remember this.
 21 Q. You don't? You don't remember receiving
 22 this?
 23 A. Again, I -- it's pretty obvious that --
 24 no, I don't remember. I don't remember receiving it,

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1 Q. And what is it?
 2 A. What is it?
 3 Q. Yes.
 4 A. It's a letter to the ad hoc committee
 5 from Fred.
 6 Q. You mean it's an e-mail, right?
 7 A. Or an e-mail.
 8 Q. Dated July 6, 2012?
 9 A. Yeah.
 10 Q. And essentially Professor Fagal is
 11 disappointed in your decision and he'd like you to
 12 review certain aspects again, correct?
 13 A. Yeah.
 14 Q. Specifically on the last page, do you
 15 see the paragraph that begins, "In light of the facts
 16 above"?
 17 A. Um-hum.
 18 Q. Do you see that?
 19 A. Yes.
 20 Q. It says, "I respectfully request that
 21 the committee convene to review the propriety of my
 22 suspension and that it consider the issue of
 23 Marywood's failure to take any remedial action prior
 24 to pursuing dismissal." Have I read that correctly?

MAGNA LEGAL SERVICES

1 but it --
 2 Q. Do you have any doubt that Gail Cabral
 3 actually sent this e-mail to Professor Fagal?
 4 A. No.
 5 Q. Are you surprised she stated in the last
 6 paragraph that the committee be convened twice?
 7 MS. PEET: Objection to the form.
 8 A. No.
 9 Q. Did your committee convene twice?
 10 A. No.
 11 Q. So do you think you were supposed to
 12 convene twice or you don't know?
 13 A. I don't know.
 14 MS. PEET: Objection.
 15 Q. You don't know?
 16 A. No, I -- I was never under the
 17 impression that we were supposed to convene twice,
 18 never.
 19 Q. Nobody told your committee that they
 20 should convene twice, once for suspension and once
 21 for termination?
 22 MS. PEET: Objection to the form, lack
 23 of foundation. You can go ahead and answer.
 24 A. No, I don't remember.

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1 MR. COHEN: Let's mark this as the next
 2 exhibit, please. This is O'Brien-17.

3 (Povse-14, E-mail chain, Bates Nos.
 4 DEF001611-615, is received and marked for
 5 identification.)

6 Q. Mr. Povse, why don't you review this.
 7 It's a whole chain of e-mails. Let me know whether
 8 you recognize any of them.

9 A. Okay.

10 Q. Do you remember any part of -- well,
 11 first of all, this is an e-mail exchange between you
 12 and the other committee members, correct?

13 A. Um-hum.

14 Q. And it begins on July 9, 2012, right?

15 A. July 12th?

16 Q. July 9th.

17 A. Oh, okay. Yeah.

18 Q. And the first e-mail in the chain is
 19 from you to Helen and Ed, and you say, "No surprise
 20 that we heard back from Dr. Fagal." Do you remember
 21 writing that e-mail?

22 A. No, but I'm sure I did.

23 Q. Why was it no surprise that you heard
 24 back from Dr. Fagal?

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1 A. Well, because of the importance of this
 2 whole decision.

3 Q. And then the most recent e-mail in the
 4 chain is one from you to Helen and Ed stating, "I
 5 would prefer to get together even for a short time to
 6 clarify a few things." Do you remember --

7 A. I don't remember what those "few things"
 8 were.

9 Q. Do you even remember meeting?

10 A. No, I don't remember.

11 MR. COHEN: Can you mark this as the
 12 next Povse exhibit, please.

13 (Povse-15, E-mail dated July 15, 2012,
 14 Bates No. DEF001513, is received and marked for
 15 identification.)

16 Q. Do you recognize this document,
 17 Mr. Povse?

18 A. Yes.

19 Q. And this is an e-mail that Helen Bittel
 20 sent to Sister Munley in which you were copied,
 21 right?

22 A. Yeah.

23 Q. On July 15, 2012?

24 A. Yeah.

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1 Q. And there's a paragraph that says, "In
 2 coming to this decision, we made the following
 3 determinations," and then there's, like, five bullet
 4 points.

5 A. Um-hum.

6 Q. Do you know how you arrived at these
 7 determinations?

8 MS. PEET: Objection to the form.

9 Q. Well, let me ask you this: Dr. Bittel
 10 is essentially stating that your committee met on
 11 Friday, July 13th, correct?

12 A. Um-hum.

13 MS. PEET: Is that a yes?

14 Is that a yes?

15 A. Yes. Yes, I'm sorry. Yes.

16 Q. And in essence, Dr. Bittel is
 17 explaining, you know, the view of the committee when
 18 she's writing this e-mail, right?

19 A. Um-hum, yep.

20 Q. So do you know how the committee arrived
 21 at these bulleted determinations?

22 A. I'm sure based on a lot of information
 23 that we had and a lot of discussion.

24 Q. Do you remember whether your committee
 MAGNA LEGAL SERVICES

1 ever communicated with the university's own inside
 2 counsel, Maria Theresa Paterson?

3 A. I don't remember. I -- I don't
 4 remember.

5 Q. Do you know whether they -- whether your
 6 attorney consulted with any other attorney other than
 7 possibly Will Anthony?

8 A. I don't think so.

9 MR. COHEN: I have nothing further.
 10 CROSS-EXAMINATION BY MS. PEET:

11 Q. I just have a few questions for you.

12 Mat, did anyone tell you either
 13 in Marywood University or outside of Marywood
 14 University how you needed to vote with reference to
 15 the charges?

16 A. No.

17 Q. Did -- that's a no?

18 A. No.

19 Q. Okay. Did anyone from Marywood or
 20 outside of Marywood suggest to you the way that you
 21 should vote with reference to these charges?

22 A. No.

23 Q. Did you feel that you needed to vote in
 24 support of Sister Munley's position in order to keep

MAGNA LEGAL SERVICES

1 your job or to avoid any adverse consequences?
 2 A. No.
 3 Q. Did you fear that your job was in
 4 jeopardy if you had voted in support -- against
 5 Sister Munley?
 6 A. No.
 7 Q. Did you believe that you served
 8 objectively and impartially?
 9 A. Yes.
 10 Q. Do you feel that your vote was
 11 appropriate under the circumstances?
 12 A. Yes.
 13 Q. As we sit here today, do you still
 14 support the way that you voted, which was to uphold
 15 the suspension and termination of Dr. Fagal's
 16 employment and tenure?
 17 A. Yes. Yes.
 18 Q. You testified earlier about the
 19 committee's responsibility, and in short you
 20 testified that you had to review whether Dr. Fagal's
 21 suspension and termination was appropriate from a
 22 substantive standpoint, correct?
 23 A. Yes.
 24 Q. Was it your understanding that the

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1 substance of Sister Anne Munley's decisions to
 2 suspend and later terminate." That's not correct,
 3 correct?
 4 A. Right.
 5 Q. In other words, what is stated in this
 6 document is an incorrect statement, correct?
 7 A. Right.
 8 Q. Likewise, where it says, "Their
 9 procedural review was limited to the charge of
 10 suspension, not termination or revocation of tenure,"
 11 that's also an inaccurate statement, correct?
 12 A. Um-hum.
 13 Q. Is that a yes?
 14 A. Yes. Yes. Sorry.
 15 MS. PEET: I have no other questions.
 16 MR. COHEN: A few more.
 17 Can I see that exhibit?
 18 THE WITNESS: Yes.
 19 REDIRECT EXAMINATION BY MR. COHEN:
 20 Q. A few minutes ago Ms. Peet asked you if
 21 you had any fear for your job if your committee ruled
 22 against President Munley, and you said no, right?
 23 A. Yeah.
 24 Q. Isn't it also true that your wife is

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1 faculty grievance committee's responsibility was the
 2 same, that is, reviewing the suspension and
 3 termination but just from a procedural perspective?
 4 A. Yes. Yes.
 5 Q. And was that your understanding at the
 6 time you were selected to be on the committee?
 7 A. Yes, from what I could remember.
 8 Q. And this is four years ago, correct?
 9 A. Right.
 10 Q. If you can take a look at what has been
 11 marked as Povse Exhibit 4. You just testified that
 12 it was your understanding that the faculty grievance
 13 committee -- that was the one on which Erin Sadlack
 14 chaired -- they reviewed from a procedural
 15 perspective both the suspension and termination of
 16 Dr. Fagal, correct?
 17 A. Yes.
 18 Q. If I can draw your attention to the
 19 paragraph where it starts, "She explained."
 20 A. Um-hum.
 21 Q. And it reads, "Their charge was to
 22 review whether" -- "their charge" being the faculty
 23 grievance committee -- "was to review whether
 24 procedure was properly followed, not to review the

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1 not -- she serves as a professor at Marywood but
 2 she's not tenured?
 3 A. My wife is the director of the
 4 galleries, so she's not a teaching member, so
 5 there -- there is no such thing as tenure in those
 6 positions.
 7 Q. Would it be fair to say that your wife
 8 has less job security than you do, given that you're
 9 tenured?
 10 A. I guess you might say that. Actually,
 11 she does her job better than I do. She's probably
 12 more valuable than I have ever been.
 13 Q. You know she's not going to see a copy
 14 of this.
 15 A. She's retiring, too, so none of this
 16 really matters all that much.
 17 Q. All right. Let's go back to this
 18 Povse-4 exhibit. Now, this is minutes of one of your
 19 committee's meetings, correct?
 20 A. Yes.
 21 Q. And before -- had you seen -- I might
 22 have asked this before. Had you seen these minutes
 23 before today?
 24 A. I would say that I must have seen them

MAGNA LEGAL SERVICES

1 at some point in time.

2 Q. And a minute or two ago, Ms. Peet asked
3 you about several statements that were made in these
4 minutes and asked you whether they were accurate, and
5 I think you said no. Correct?

6 A. Yeah. Yes.

7 Q. Do you have any idea how a statement
8 that wasn't accurate can nonetheless make it
9 through three committee members and wind up on this
10 document?

11 MS. PEET: Objection to the form.

12 A. No. I don't know.

13 MR. COHEN: Okay. I have no further
14 questions.

15 MS. PEET: I just have a couple
16 follow-ups.

17 We tend to do that.

18 RECROSS-EXAMINATION BY MS. PEET:

19 Q. Did you ever fear that your wife's job
20 would be in jeopardy had you voted against Sister
21 Munley?

22 A. No.

23 Q. Did that thought of your wife's job even
24 cross your mind when you were voting whether or not

MAGNA LEGAL SERVICES

1 to uphold Sister Munley's decision?

2 A. No.

3 Q. As we sit here today, do you feel that
4 Sister Munley would have taken any action against
5 your wife had you voted against her?

6 A. No.

7 MS. PEET: No further questions. I
8 believe you are all done.

9 (Whereupon, at 4:38 p.m., the deposition
10 of Mathew R. Povse concluded.)

11

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MAGNA LEGAL SERVICES

1 CERTIFICATE

2
3 I HEREBY CERTIFY that the witness was
4 duly sworn by me and that the deposition is a
5 true record of the testimony given by the
6 witness.

7
8
9
10 Judy A. Black
11 Registered Professional Reporter
12 Dated: July 13, 2016

13
14
15
16 (The foregoing certification of this
17 transcript does not apply to any reproduction
18 of the same by any means, unless under the
19 direct control and/or supervision of the
20 certifying reporter.)

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1 INSTRUCTIONS TO WITNESS

2
3 Please read your deposition
4 over carefully and make any necessary
5 corrections. You should state the reason in
6 the appropriate space on the errata sheet for
7 any corrections that are made.

8 After doing so, please sign the
9 errata sheet and date it.

10 You are signing same subject to
11 the changes you have noted on the errata sheet,
12 which will be attached to your deposition.

13 It is imperative that you
14 return the original errata sheet to the
15 deposing attorney within thirty (30) days of
16 receipt of the deposition transcript by you.
17 If you fail to do so, the deposition transcript
18 may be deemed to be accurate and may be used in
19 court.

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1 -----
 2 ERRATA
 3 -----
 4 PAGE LINE CHANGE

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1 LAWYER'S NOTES
 2 PAGE LINE
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ACKNOWLEDGMENT OF DEPONENT

I, Mathew R. Povse, do hereby certify that I have read the foregoing pages and that the same is a correct transcription of the answers given by me to the questions therein propounded, except for the corrections or changes in form or substance, if any, noted in the attached Errata Sheet.

Mathew R. Povse Date

Subscribed and sworn to before me this day of , 2016

My commission expires:

Notary Public

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1 Povse-1, Letter dated February 10
 2 8, 2012, with attachments,
 3 Bates Nos. DEF00207-226
 4 Povse-2, E-mail dated May 6, 11
 5 2012, with attachments, Bates
 6 Nos. DEF001433-442
 7 Povse-3, Minutes for Ad Hoc 12
 8 Committee Meeting #1, May 11,
 9 2012, Bates Nos. DEF001408-509
 10 Povse-4, Minutes for Ad Hoc 16
 11 Committee Meeting #2, May 17,
 12 2012, Bates Nos. DEF000322-323
 13 Povse-5, E-mail dated May 22, 18
 14 2012, with attachments, Bates
 15 Nos. DEF000337-342
 16 Povse-6, Document, Bates Nos. 19
 17 DEF000143-144
 18 Povse-7, E-mail chain, Bates 20
 19 Nos. DEF000353-356
 20 Povse-8, Faculty Grievance 22
 21 Committee Meeting, June 19,
 22 2012, Bates Nos. DEF001510-512
 23 Povse-9, E-mail dated June 25, 28
 24 2012, Bates No. DEF000393
 25 Povse-10, E-mail Bates No. 30
 26 DEF00245
 27 Povse-12, E-mail dated July 5, 31
 28 2012, with attachment, Bates
 29 Nos. DEF001585-590
 30 Povse-13, E-mail dated July 6, 38
 31 2012, with attachment, Bates
 32 Nos. DEF001494-496
 33 Povse-14, E-mail chain, Bates 42
 34 Nos. DEF001611-615
 35 Povse-15, E-mail dated July 15,
 36 2012, Bates No. DEF001513
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Exhibit 51



Policies and Procedures Manual: Employment At-will Relationship with Administrators and Staff



Policy Statement

Employment at Marywood University is entered into voluntarily. Some jobs require a contractual relationship with the University, and they have a fixed term of employment. In the absence of a fixed contractual term, an administrator's or staff member's employment relationship with Marywood University is presumed to be at-will.

Employees are free to resign at any time. Those who are employed at-will are requested to give at least two weeks written notice to their immediate supervisors of intent to resign. In recognition of the responsibilities inherent in each position, however, those who wish to receive payment for unused vacation and personal days at the end of their employment must adhere to the following rules:

Exempt employees must give at least twenty work days written notice to their immediate supervisors.

Non-exempt full-time employees must give at least ten work days written notice. Non-exempt part-time employees must give the equivalent of at least two work weeks written notice.

The University reserves the right to shorten the notice period.

An exit interview with the Human Resources Department must be scheduled and attended by the resigning employee.

Employees may take vacation, personal, or snow days during the time between giving notice and resignation only with the prior approval of their immediate supervisors. However, they are required to be at work on the last day as indicated in the notice of intent to resign. If an employee fails to report for work on that day, the last day actually worked will become the date of resignation.

Employees who become sick or have accidents or other emergencies during the time between giving notice and resignation must provide a statement from a health care provider, regardless of the amount of time taken off.

Employees are covered by applicable benefits through the end of the month in which their last day of work occurs.

Definitions

Employment at-will is a legal term that permits the termination of employees for any or no reason, with or without cause, with or without notice, at any time it seems to be in the interest of the University.

Exempt employees are management, supervisory, professional and administrative employees whose positions meet specific tests established by the Fair Labor Standards Act (FLSA) and state law and who are exempt from overtime pay requirements. Exempt employees are expected to perform functions of responsibility and supervision that may require them to work beyond the normal workweek without additional payment.

Nonexempt employees are those whose positions do not meet FLSA exemption tests and who are paid for all hours worked. Nonexempt employees are paid one-and-one-half times their regular rate for hours worked in excess of 40 in one workweek. Overtime work must be approved in advance by the immediate supervisor.

Procedures

Questions should be addressed to the Human Resources Department.

Related Policies

- [Complaint Procedures for Administrators and Staff](#)

History

07/01/91 - Reaffirmed with publication of Personnel Manual with the title Employment Relationship

04/07/00 - Revision approved by the President of the University as recommended by the Policy Committee of the University

02/24/06 - Revision approved by the President of the University, including change of title from Employment Relationship with Non-faculty Employees, as recommended by the Policy Committee of the University

&nbs;p;

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Exhibit 52



Non-reappointment of Faculty Member



Policy Statement

Non-reappointment of a faculty member is the right of the President of Marywood University, so long as there is no violation of tenure policies, contractual agreements, or other policies stated in the Faculty Handbook. Notification of non-reappointment is made based on length of service as follows:

not later than March 1 of the first academic year of service;

not later than December 15 of the second academic year of service; or

at least twelve months before the expiration of an appointment after two or more years at Marywood University.

Related Policies

- [Tenure](#)
- [Contractual Agreements with Faculty Members](#)

History

07/01/89 - Reaffirmed with publication of Faculty Manual

07/01/03 - Editorial changes made to reflect academic restructuring

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FFF001445

Exhibit 53



Policies and Procedures Manual: Violent Acts and Threats



Policy Statement

Marywood University is committed to maintaining an environment that avoids exposure of staff, students, and visitors to foreseeable risks and prevents unnecessary damage to University property. If violent acts occur or threats of violence are perceived on campus or on other property controlled by the University, decisive action will be taken immediately to limit the potential for further development.

The Senior Director of Safety, Security and Environmental Compliance is responsible for ensuring that federal and state laws regarding crimes and offenses and University regulations related to a safe environment are enforced. She/he has the authority to determine whether circumstances surrounding the behavior constitute a credible threat or act of violence, and to inform law enforcement authorities in the case of an alleged violation of public law. Calls to 911 by others in obvious emergency situations must be reported to the Chief of Campus Safety and the Senior Director of Safety, Security and Environmental Compliance as soon as possible.

A Marywood University student, faculty, or staff member in violation of this policy will be subject to University disciplinary policies and procedures up to and including termination.

Definitions

For purposes of this policy, threats and acts of violence include but are not limited to

- Repeatedly swearing or using abusive or offensive language toward others;
- Intentionally damaging property;
- Verbalizing a wish or intent to hurt others;
- Sending aggressive or threatening written, verbal, electronic, or visual communications;
- Engaging in felony property damage;
- Engaging in aggravated assault;
- Possession, whether open or concealed, storage in or on personal or University property, delivery, transportation, use, sale, purchase or receipt of a weapon on University property.

Procedures

In the event of an act or threat of one that appears to be violent, the Chief of Campus Safety is to be notified as soon as possible. Threatening behavior is complex, and it is not expected that students, faculty, or staff will be experts in assessing it. If the Chief of Campus Safety is not available, the Director of Safety, Security and Environmental Compliance shall be notified.

The Emergency Response Plan and Personnel Manual for the Campus Safety Department are maintained in the Office of Campus Safety.

Related Policies

- [Safe University Environment](#)
- [Drug-Free Workplace](#)
- [Civil Rights Policy](#)
- [Complaint Procedures for Administrators and Staff](#)
- [Civil Rights Complaint Procedures](#)
- [Institutional Property Policy](#)
- [Faculty Grievances and Appeals](#)

History

12/07/01 - Approved by the President of the University as recommended by the University Committee on Policy

01/30/06 - Cyclical review approved

04/29/11 - Revision approved by the President of the University as recommended by The Policy Committee of the University

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